

19-06-2021

Item-15

Ct-16

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WP.CT 38 of 2021

Subhan Kumar Guin

Versus

Union of India & Ors.

Mr. Pratik Majumdar, Adv.

... for the petitioner.

Mr. Samitendra Dutta, Adv.

...for the respondents

This is an application filed by the petitioner for stay of the disciplinary proceedings on the ground that, although an application has been filed before the Central Administrative Tribunal under Section 19 of the Central Administrative Tribunal Act, the matter could not be taken up by the Tribunal as it is not functioning presently and taking advantage of the said situation, the disciplinary authority is trying to proceed with the disciplinary proceeding.

The learned Counsel for the petitioner has drawn our attention to Clause 6.0 (ii) of the guideline of the Railway Board dated 3rd December, 2018 where it has been stated that for major penalty cases that are more than six months old, the disciplinary authority shall record the reasons for delay. If the delay is attributable to the charged official, the disciplinary authority may take ex-parte decision following the notice procedure as per the Railway Servants (Disciplinary & Appeal) Rules, 1968 and if the delay is not on account of the charged official, the disciplinary authority should process for closure of the case.

It is submitted that although representations have been filed immediately after the order passed by the Division Bench on 26th June, 2018, the enquiry proceeding was initiated in January 2021 that is near to three years after such order and in view of such guideline the disciplinary proceeding cannot be allowed to be continued. In the order dated 26th June, 2018 we find that the Hon'ble Division Bench has not interfered with the charge-sheet but was pleased to set aside the order dated 29th November, 2017 only on the ground that the authority proceeded to continue with the enquiry proceeding while the representation made by the petitioner on 19th July, 2017 was kept pending and the said proceeding was abruptly concluded without giving an opportunity to the petitioner to seek redressal of the same before the appropriate authority.

The coordinate Bench observed that there was failure on the part of the learned Tribunal to examine the decision making process of the respondent authority in proceeding with the enquiry proceeding pending disposal of the representation of the petitioner. It is, however, significant to note that, before the coordinate Bench the present petitioner has prayed for quashing and setting aside of the charge-sheet dated 10th March, 2017. The writ petition was disposed of by giving opportunity to the respondent authorities for proceeding with the enquiry proceeding de-novo with certain guidelines.

In view of the aforesaid order, we are, prima facie, of the opinion that the Circular dated 3rd December, 2018 may not

have any application. The issue as to whether the long delay of three years to proceed did cause prejudice to the petitioner in relation to the disciplinary proceeding is a matter that is pending before the Tribunal.

We are not inclined, at this stage, to grant any stay as to the enquiry proceeding initiated in terms of the order of the previous coordinate Bench. We find from record that 28th June, 2021 was fixed by the Tribunal to ascertain if the pleadings are complete and opportunity was given to the present petitioner to mention the matter before the Bench.

Since the Tribunal is in seisin over the matter, we dispose of this application by recording that the participation of the petitioner in the disciplinary proceeding shall be without prejudice to the rights and contentions raised in OA No. 476 of 2021. The petitioner shall appoint his defence counsel on or before 15th July, 2021. The disciplinary proceeding shall be continued strictly by adhering to the covid guidelines.

The enquiry officer shall not file the enquiry report without express leave of the Tribunal. The enquiry proceeding shall abide by the result of OA 476 of 2021. We request the learned Tribunal to take up the matter as and when the business of the Tribunal shall permit.

With the above directions, WPCT 38 of 2021 is accordingly disposed of.

It is needless to mention that the petitioner should be

given a reasonable opportunity to present his case and there should not be any violation of principles of natural justice. However, this order shall not influence the decision of the learned Tribunal in deciding OA 476 of 2021 impartially.

The above observations are only prima facie

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)