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20.09.2021
TN

W.P.C.T. No. 38 of 2019
IA No: CAN 1 of 2021

(Via video conference)

Union of India and others
Vs.
Shri Ram Janam Pal

Mr. Arpayan Mukherjee,
Mr. Abhra Mukherjee

.... for the petitioners

Mr. Jagadish Ranjan Das

.... for the respondent

The writ petition and the application for expeditious disposal of the same are taken up for hearing together. Since sufficient urgency has been made out for hearing the main writ petition, the application for early disposal, bearing CAN 1 of 2021, is allowed without costs.

In the main writ petition, learned counsel for the petitioners contends that the respondent had given a fraudulent impression at the time of joining service on the ground of compassionate appointment, that his father had expired, precisely on which ground he was taken in service.

However, it is submitted that subsequently during May 22, 1995 till May 29, 1995, when the respondent was on leave, it was discovered that the father of the complainant was actually alive. Accordingly, a First Information Report (FIR) was lodged on May 24, 1995 and a criminal case was initiated against the respondent and his alleged father. Both the respondent and his father, it is alleged by learned counsel for the petitioners, were arrested on May 27, 1995, but subsequently one of the accused, being the alleged father of the respondent, absconded and has since been absconding.

It is further contended that the respondent applied for a review of the order of suspension as late as 21 years after the suspension. Hence, the tribunal acted without jurisdiction in entertaining such belated application at all.

That apart, the petitioners submit that the criminal trial has been stalled for an indefinitely long period and charges have not yet been framed, due to the dilatory tactics adopted by the accused persons. As such, the order of the tribunal, it is argued, ought to be set aside.

Learned counsel for the respondent categorically contends, by placing reliance on certain documents annexed at pages 41 and 42 of the writ petition, being respectively a certificate issued by the Doctor who had allegedly attended the respondent's father at the relevant

point of time, and a Death Certificate issued by the Government of Uttar Pradesh, indicating that the father of the present respondent had expired on August 9, 1991, that the respondent had not resorted to falsity while stating about the demise of his father while applying for compassionate appointment.

Although learned counsel for the petitioners takes an objection on such score, by pointing out that the Death Certificate was obtained only on February 18, 2010, we do not find any direct bearing of such fact in the context of the case.

Learned counsel for the respondent further argues that Rule 5 of the relevant Rules, that is, the Railway Servants (Discipline and Appeal) Rules, 1968, was referred to by the tribunal in its impugned order, along with Sub-Rule 6 thereof, which indicates that a railway servant is deemed to be suspended with effect from the date of detention, if he is detained custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours. However, such deemed suspension shall not be valid after a period of 90 days, unless it is extended after review in the manner provided in Sub-Rule 7 of the relevant Rules.

It is seen from the order of the tribunal that the tribunal rightly proceeded on the premise that, since no such review was undertaken at the end of the petitioners,

the deemed suspension automatically spent its force and, as such, was justified in directing the present petitioners to pass suitable order revoking the suspension of the applicant and granting him appropriate benefits in accordance with law by issuing a reasoned and speaking order.

The other argument advanced by the petitioners, as regards the alleged delay of 21 years in the respondent in filing the review application, does not hold water since the illegality committed was on the part of the petitioners themselves and has been continuing *de die in diem*, from the date on which the deemed suspension stood automatically revoked till today. In fact, the respondent reached his age of superannuation in the meantime, on July 31, 2020.

In such view of the matter, we do not find any fault in the direction given by the tribunal in the impugned order.

Accordingly, W.P.C.T. No.38 of 2019 is dismissed, thereby affirming the judgment and order dated July 20, 2018 passed by the Central Administrative Tribunal, Calcutta Bench in O.A. No.350/00322/2017 (M.A. No.350/00201/2017) and directing the petitioners to pass suitable order revoking the suspension of the applicant and grant him appropriate benefits, including retiral benefits, to which the respondent is entitled to in

accordance with law, by passing a reasoned and speaking order, within November 30, 2021. The time-frame stipulated herein is mandatory and peremptory.

The parties shall act on the communication of the learned Advocates of the parties, accompanied by server copies of this order, without insisting upon prior production of a certified copy thereof, for the purpose of compliance of the same.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Jay Sengupta, J.)