

Item-3 26-07-2021

WP.CT 46 of 2021

The Union of India & Ors.
Versus
Sri Pintu Moulik

^{sg} Ct. 16

(Through Video Conference)

Mr. Rabindranath Bag, Adv.
...for the petitioners
Mr. Ujjal Ray, Adv.
Mr. Arpa Chakraborty, Adv.
...for the respondent

The writ petition is directed against an order dated 2nd February, 2021 in O.A. No. 350/745/2020 and O.A. No. 350/537/2020. In OA 350/745/2020 the respondent has challenged the order of punishment imposed upon the respondent by an order dated 14th September, 2020 along with the speaking order dated 14th September, 2019 issued by the disciplinary authority. In O.A.350/537/2020 the respondent has challenged the Charge Memoranda dated 13.10.2018 and the office order dated 30.06.2020.

It appears from the record that the disciplinary authority in the order dated 14th September, 2018 imposing punishment proceeded on the basis that the charge-sheet, which has culminated in an enquiry report, is enforceable and, therefore, on the basis of such findings of the enquiry officer, imposed the punishment.

Before the learned Tribunal, the writ petitioners respondents have candidly stated the following facts:

“22. the text of the order passed in O.A. No. 1387 of 2019 was not appropriately discussed with the authority by the concerned Advocate who are dealing with the case and the disciplinary authority was also not aware that the inquiry report has been quashed by the Hon’ble Tribunal. The disciplinary authority could not interpret the order mention in the judgment dated 19.12.2019 at Sl. No.7 & 8. The DA had complied the order at Sl. No.8 of the judgment in course of passing the final order. It was totally unintentional.

23. The authority has all respect and in all issues, the orders of the Hon’ble Tribunal has been complied with, but in the instant case, the case of the authority was not appropriately canvassed, as such the entire issue stood in miscommunication and the order of removal was passed.

It is further stated that the authority has passed the order of removal not with the intent to act in violation of the order passed by the Hon’ble Tribunal.

24. In the aforesaid situation, for the sake of justice, the Hon’ble Tribunal may be pleased to pass an appropriate order so that the seriousness of the offence is not ignored and the authority can continue with the proceeding in accordance with law to unveil the truth of charges levelled against the applicant.”

The writ petitioners have also candidly submitted before us that notwithstanding the earlier order passed in O.A.1387 of 2019 by which the disciplinary authority was directed to first dispose of the representations dated 18th June, 2018 and 2nd May, 2019 in terms of the order dated 22nd July, 2019 as also order passed in the earlier O.A., the disciplinary authority had proceeded on the basis as if the disciplinary authority could proceed with the findings of the enquiry officer regardless of the

directions passed in O.A. No. 1387 of 2019 and O.A. No. 916 of 2018. It appears that the disciplinary authority without following the directions as mentioned in paragraphs 7 and 8 of the order dated 19th December, 2019 passed in O.A. No. 1387 of 2019, proceeded to impose punishment which, *ex-facie*, is in violation of the order passed in the earlier proceeding thereby rendered the said order *void ab-initio*. The direction in the earlier proceeding by the Central Administrative Tribunal passed in O.A. 1387 of 2019 on 19th December, 2019 reads as under:

“7. The speaking order Presenting Brief, IO’s report being thus, issued in blatant and deliberate violation of the order passed in O.A. 916 of 2019, are set aside and quashed.

8. Consequently the DA is directed to first dispose of the representations dated 18.06.2019, 22.05.2019, in terms of the order dated 22.07.2019 as in earlier O.A., within 4 weeks from the date of receipt of a copy of this order, either withdraw the charge memo if found vague, and issue a fresh charge sheet, or provide copies documents as are found relevant; justify irrelevancy of the other documents, conclude the proceeding in accordance with law and within a period of 6 months from the date of receipt of this order issue a final order in the proceedings, which shall accordingly govern the fate of the applicant.”

We also find from record that the order passed in O.A. 350/916/2019 dated 22nd July, 2019 where the charge-sheet issued on 13th October, 2018 was challenged by the original applicant, the learned Tribunal observed that denial of the documents asked for by the original applicant could not come under the purview of privileged documents as stated in Paragraph 837 in IREM 206. We have been informed that these

documents were also not supplied to the original applicant.

Under the aforesaid facts and circumstances of the case and in view of the stand taken by the authority concerned before the learned Tribunal in the earlier proceeding admitting that due to lack of communication, the disciplinary authority overlooked the findings of the learned Tribunal in Serial No.7 of the earlier order, we feel that the Tribunal was justified in quashing the order dated 14th September, 2020 with liberty to the present petitioners to act in accordance with law.

It is placed on record and it is not in dispute that the order dated 22nd July, 2019 and the order dated 19th December, 2019 have not been challenged by the writ petitioners and the said orders have attained finality.

The learned Counsel for the respondent has submitted that in terms of the earlier order dated 19th December, 2019, direction given to the writ petitioners to complete the entire exercise within a period of six months from the date of receipt of the said order, has not been complied with.

In view of the fact that the matter was pending and there was some misunderstanding on the part of the disciplinary authority as canvassed in the affidavit filed before the learned Tribunal, we give liberty to the petitioners, if advised, to have a *de novo* enquiry and if such proceeding is initiated, it is needless to mention that the petitioners shall comply with the principles of natural justice and make available all the documents to the original applicant for effectively defending him in the enquiry proceeding, unless such documents are privileged. In

considering the relevancy of the documents that may be asked for by the original applicant, if the *de novo* enquiry is initiated, regard must be given to the observations of the learned Tribunal in relation to such documents made in the order dated 22nd July, 2019 in O.A. 350/916/2019.

If the *de novo* enquiry is not initiated within a period of four week from date, it shall be presumed that the writ petitioners are not interested to proceed against the original applicants. In the event *de novo* enquiry is initiated, the entire proceeding shall be concluded within a period of one year from the date of initiation of such disciplinary proceeding.

In view of the aforesaid order, we feel that the learned Tribunal while quashing the order dated 14th September, 2020 should have passed consequential order protecting the interest of the original applicant. It is open to the writ petitioners to treat the applicant under suspension from the date of issuance of the order of removal for a further period of four weeks and the original applicant shall be entitled to admissible subsistence allowance. In the event fresh proceedings are not initiated, the original applicant should be treated as if he is in employment and suitable order of reinstatement shall be passed by the writ petitioners with consequent benefits.

In view of the aforesaid order, the learned Counsel for the original applicant has candidly submitted that two applications filed before the learned Tribunal have now become infructuous and he shall apply before the learned Tribunal for withdrawal of the said cases.

Considering the seriousness of the charge sheet, we permit *de novo* enquiry on the self-same allegations as we have set aside the earlier orders passed by the disciplinary authority on the ground of procedural impropriety and violation of principles of natural justice. The relevancy of documents are not required to be gone into at this stage. The validity of the earlier charge sheet is also not gone into at this stage in view of paragraph 8 of the order dated 19th December, 2019 in O.A. 1387 of 2019.

With the aforesaid observation, the writ petition is accordingly, disposed of.

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.)