

06.09.2021
SL No.20
Court No.16
(gc)

WPCT 48 of 2021

**Union of India & Ors.
Vs.
Manoranjan Nikap**

(Via Video Conference)

Mr. Rabindranath Bag,
Mr. Deepak Kumar Singh,
...for the Petitioners.
Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Sudip Krishna Dutta,
Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
...for the Respondent.

The writ petition is directed against an order passed by the Central Administrative Tribunal on 12th April, 2021 in connection with an application filed by the respondents praying, *inter alia*, for a direction upon the Revising Authority to modify the Order No.SER/P-HQ/DAR/410/6/MN/245 dated 11th August, 2020 and to reinstate the applicant in service since the order passed by the Appellate Authority has been quashed.

The applicant at the relevant time was working as Loco Pilot(Pass) in Kharagpur Division of South Eastern Railway was served with an Office Order dated 3rd November, 2018 wherein it was stated that some incumbents held unlawful demonstration in front of combined Crew Lobby in front of Kharagpur railway station, manhandled Government officials, forcibly prevented other Government officials from performing official duty and misbehaved with higher Railway Administrative Officers. On

the basis of such allegations the applicant was removed from service without any enquiry. He preferred an appeal against such punishment order which was dismissed by the Appellate Authority on 12th April, 2019. He preferred a revision petition to the Principal and Chief Operating Manager, South Eastern Railway, Garden Reach, Kolkata on 4th February, 2020 followed by reminder dated 4th May, 2020. Since no order was issued on the said revision petition, the applicant preferred O.A.No.607/2019 before this Tribunal which was disposed of on 15.01.2020 with a direction upon the Revisional Authority to issue a reasoned and speaking order on the revisional application within six weeks. Pursuant thereto, the Principal Chief Operations Manager being the Revising Authority issued an order on 11th August, 2020 directed as under:-

“Considering the entire case, in the light of Hon’ble CAT/CAL’s Orders vis-à-vis the revision petition dated 05.02.2020 submitted by the said Shri Nikap, the undersigned decides for a through departmental inquiry at the level of Appellate Authority. The Order dated 12.04.2019 passed by the Appellate Authority is set aside and the Appellate Authority (AA) is directed to dispose of the appeal preferred by the said Shri Nikap, afresh holding inquiry following the proper procedure of The Railway Servants(Discipline & Appeal) Rules, 1968 as amended from time to time.”

Before the Tribunal, the respondent/applicant alleged that in the previous round of litigation while deciding their case analogously on 15th January, 2020 in

O.A.No.607/2019 with O.A. No.608,636,637,638 and 735 of 2019, the Tribunal had directed the Revising Authority to come to a definite conclusion with due and proper application of mind. It was alleged before the Tribunal that the Revising Authority had failed to apply his mind and by reason of failure to decide the matter, the order of the Revising Authority is required to be set aside. It was further argued that since there was no recording of reasons as to why holding enquiry is not practicable, any order imposing punishment is vitiated and must be quashed.

The learned Counsel for the respondents before the Tribunal had relied upon Rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968 to contend that enquiry proceeding can be initiated against a removed railway servant in view of the explanatory note of Rule 18 of Railway Servants (Discipline & Appeal) Rules which defines the expression "Railway Servant" as including a person who has ceased to be in railway service.

One fundamental issue which, we believe, has rightly struck the Tribunal in deciding the issue is that he was found to be guilty without holding any kind of enquiry. The Revising Authority in its order had failed to apply his mind that an enquiry is required to be gone into before coming to a finding that the writ petitioner has committed any misconduct. As a natural corollary to this, the authority concerned should have appointed an enquiry officer and proceeded with the enquiry in accordance with law. Whether the employee during that time should be kept

under suspension is a matter to be decided by the employer having regard to the relevant factors. But the fact remains that notice of enquiry stated to be a “punishment notice” which completely vitiate the said proceedings. The person is going to be penalized without any finding from any authority of any misconduct and it is clearly a violation of principles of natural justice. In the instant case, there has been a violation of the principles of natural justice which the learned Tribunal has taken note of and, accordingly, quashed the order dated 19th December, 2020 as the order of removal is not based on any reason and contrary to the direction of the Revisional Authority by which specific direction was given for holding fresh enquiry. The reason for quashing of the order of removal has been interpreted by the learned Tribunal in the following words:-

“We are surprised to note that Sri Manoranjan Nikap i.e. the applicant in O.A.350/831/2020 who stands removed from railway service has been directed to attend a preliminary enquiry on 28.12.2020 by an Enquiry Officer being the Divisional Electrical Engineer, TRS namely, Sri A.K.Gupta in his chamber, which course of action is neither supported by any rule of law nor by any authority. Further, an order dated 19.12.2020 addressed to Manoranjan Nikap says that “preliminary enquiry to be held on 28.12.2020 in connection with above punishment notice” which “punishment notice” is in fact an order of removal from service dated 03.11.2018, and can be issued only after withdrawal of the removal order by the competent authority. We are even more surprised to note that by a memo dated 24.04.2019 the applicant, a removed employee, where master-servant relationship has

severed a charge sheet in terms of Railway Servants (Discipline & Appeal) Rules has been issued which course is not permissible in law. The respondents have miserably failed to justify such action illegality and violation of Railway Servants (Discipline & Appeal Rules) by the authorities is palpable. No rule or authority has been cited to support such course of action.

Similar illegal orders have been issued in other matters too.

*We would note that the Hon'ble Apex Court in **Bhavnagar University Vs. Palltana Sugar Mill (P) LTD and Others** reported in (2003) 2 Supreme Court Cases 111 has observed as under:-*

“When a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the statute are only creature of statute. They must act within the four corners thereof.”

The respondent authorities were, however, given opportunity to act strictly in accordance with law. We expected the petitioners to have gracefully accepted the said order for the various holes in the measures adopted by them to remove the respondent. Mr. Rabindranath Bag, learned Counsel appearing for the petitioners has submitted that the enquiry proceeding may proceed after keeping the respondent under suspension and he may be deemed to have been reinstated for the purpose of holding enquiry, however, we are not making any observation on this. But it is needless to mention that the order of removal has been set aside. He needs to be reinstated in his service but

whether he should be allowed to discharge his function regularly or to be kept under suspension is for the authority to decide.

With the aforesaid observation, the writ petition being WPCT 48 of 2021 stands disposed of.

However, there shall be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)