

28.01.2021
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ns Ct.04

M.A.T. 675 of 2020

**Surajit Panigrahi
Vs.
Union of India & Ors.**

Mr. Kishore Datta, Id. A.G.
Mr. Pinaki Ranjan Chakraborty ... for appellant.

Mr. Y. J. Dastoor, A.S.G.
Mrs. Chandreyi Alam,
Ms. Runu Mukherjee For Bose Institute.

Mr. Vipul Kundalia,
Mr. Anirban Mitra .. for Union of India.

The appeal was listed and taken up for hearing on 13th January, 2021. It has been heard again today. We are dealing with the appeal upon parties having rendered consent to dispensation of all formalities, including waiver of requirement to serve notice of appeal.

Mr. Datta, learned senior advocate, Advocate General appears on behalf of appellant, who was unsuccessful writ petitioner. He submits, appellant had challenged advice of Central Vigilance Commissioner, orders of disciplinary and appellate authorities. By impugned order there was erroneous finding on ground nos.I and II in the writ petition. Following from impugned order is reproduced below:-

*“The petitioner was an employee of Bose
Institute who was removed from his*

establishment after certain allegations for which disciplinary proceeding was imposed upon him and at the time of appeal as appears from page 35 being annexure P8 of the writ application the petitioner consented to the constitution of the appellate authority for hearing of his appeal.

Now, after the order passed by the appellate authority, he cannot ventilate any grievance as to the appellate authority and its unreasonable constitution as has been found in Grounds no.I and II.

He submits, other points of challenge in the writ petition were not considered nor dealt with by the first Court. Impugned order be reversed and prayers in the writ petition, allowed in appeal.

Mr. Dastoor, learned senior advocate, Additional Solicitor General appears on behalf of Bose Institute. He draws attention to said grounds in the writ petition and submits, appellant had reagitated his grievance regarding constitution of appellate authority, settled by order dated 18th February, 2019 made in his earlier writ petition WP 1454(W) of 2019. Relevant paragraph from said order is reproduced below:-

“It appears that the parties have amicably resolved the dispute. The respondent No.2 being the Institute shall reconstitute the Appellate Committee by

substituting the member who was also a member of the Council which acted as the disciplinary authority. After such reconstitution the Institute shall proceed with the departmental appeal giving full opportunity of hearing to the petitioner. I pass this order without going into the question of maintainability of the writ petition.”

As such, he submits, there is no infirmity in impugned order and same should be confirmed. Mr. Kundalia, learned advocate appears on behalf of Union of India and adopts submissions made by Mr. Dastoor.

Ground nos.I and II in the writ petition are reproduced below:-

“(I) FOR THAT, the respondent no.4 by Circular dated 19th May, 2014 issued instructions for passing reasoned orders upon all the Administrative Authorities in connection with all the disciplinary proceedings but in the present case, both the disciplinary proceeding and the appeal were disposed of by passing orders in violation of the principles of Natural Justice.

(II) FOR THAT, under Rules 8.8.1 and 8.9.0 empowering the respondent no.6 Council to hear an appeal against its own order are violative of the fundamental principles of Justice and the same does not satisfy the test of

reasonableness and the petitioner reasonably apprehends that the impugned resolution and the order made Annexure – P/12 and Annexure – P/134 are hit by the doctrine of bias and the Rules made Annexure – P/4 herein not being approved by the appropriate Government, the same has no statutory force and the respondents cannot but constitute fresh Appellate Authority in a transparent and lawful manner for hearing of the petitioner's appeal afresh and Rules 8.8.1 and 8.9.0 of the aforesaid Rules being purely administrative in nature are liable to be struck down by this Hon'ble Court."

It is really ground no.II, which the first Court considered. We find challenge in said ground to be against the rules and not constitution of appellate authority. Appellant appears to contend that rules empowering the council to hear an appeal against its own order are violative of principles of natural justice. The ground may or may not find corresponding prayer but the ground is there and Court can mould relief.

It also appears that the first Court directed attention to that which stood settled. The question of constitution of appellate authority could not have been a ground or an issue in adjudication of the writ petition. Hence, we find, nothing was decided. This makes the case fit for remand.

Impugned order is reversed and the writ petition remanded for hearing and adjudication afresh. The appeal is allowed as above.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)