

06.09.2021
SL No.32
Court No.16
(gc)

WPCT 68 of 2020

**Sharda Nand Singh
Vs.
Union of India & Ors.**

(Via Video Conference)

Mr. Sanjib Kumar Mal,
Mr. Soumen Bhattacharjee,
...for the Petitioner.
Mr. Debapriya Gupta,
Mr. Sourav Mondal,
...for the Respondents.

The instant writ petition is at the instance of the original applicant before the Central Administrative Tribunal, Kolkata Bench, Kolkata in O.A. No. 1058 of 2017 and is directed against the order dated January 20, 2020 passed on such application.

The writ petitioner while working in the post of Assistant Staff Officer (ASO) in the Ordnance Factory Board was served with a memorandum of charges alleging violation of Rules 3(i), (ii), (iii) of the CCS (Conduct Rules, 1964). The alleged charges stood established as per the report of the Enquiry Officer and the disciplinary authority by an order dated 6th July, 2006 imposed the penalty of reduction in rank from ASO to Assistant. It was further ordered that the pay of the petitioner in the grade of Assistant will be fixed at Rs.5,500/- i.e. minimum of the scale of pay of the post of the Assistant. The said penalty was directed to come into force with immediate effect and continue to run till the date of his retirement i.e. 30th June, 2017.

The appeal preferred by the writ petitioner against the order passed by the disciplinary authority stood rejected vide order dated 7th August, 2007. The writ petitioner approached the Tribunal alleging non-consideration of his review application by filing an original application being O.A. No. 350/00220/2014 which was dismissed by an order dated July 1, 2016. The writ petitioner filed a writ petition being WPCT No.225 of 2016 challenging the said order dated July 1, 2016. This Hon'ble Court by an order dated November 23, 2016 allowed the writ petitioner to withdraw the said writ petition with liberty to pursue the representation made by the writ petitioner to the Chairman, Ordnance Factory Board on September 25, 2007.

The writ petitioner thereafter submitted another representation dated January 10, 2017 before the Chairman, Ordnance Factory Board. The concerned respondent authority by an order dated March 21, 2017 disposed of the representations dated September 25, 2007 and January 10, 2017 upon holding that the imposition of penalty by the disciplinary authority is rational and at par with fundamental rules and CCA (CC &A) rules and after maintaining all the statutory provisions. The writ petitioner filed an application under Section 19 of the Administrative Tribunals Act, 1985 praying for setting aside the said order dated March 21, 2017.

The Learned Tribunal dismissed the original application upon holding that there is no infirmity with the

speaking order. Being aggrieved, the original applicant preferred the instant writ petition.

The learned Advocate appearing for the writ petitioner while drawing the attention of the Court to the order dated July 6, 2006 contended that the disciplinary authority acted illegally and arbitrary by inflicting two penalties, namely, reduction in rank and reduction of pay to the minimum of scale of pay of the lower post.

Per contra, Mr. Debapriya Gupta, the learned Counsel for the respondent contended that the issue with regard to the legality of the order of penalty dated July 6, 2016 had already attained the finality and the issue raised by the writ petitioner in the instant writ petition is barred by the principles of *res judicata*.

We have heard the learned Advocates for the parties and have perused the materials on record.

The main contention of the petitioner that double penalty cannot be inflicted by the disciplinary authority was also raised by the petitioner in the earlier round of litigation in O.A. No. 350/00220/2014. The learned Tribunal after taking into consideration the findings recorded by the enquiry officer in his report, the penalty order passed by the disciplinary authority, the appellate order as well as DOP & T Office Memorandum dated February 6, 2014 observed that the disciplinary authority has the authority in terms of FR-28 to indicate the pay which the government servant on whom a penalty of reduction in rank has been imposed. The

learned Tribunal further observed that the said order was for a specific period and there is no infirmity in the order of punishment which had attained finality in 2007.

Since the issue with regard to double penalty and the fixation of pay as raised in the instant writ petition was also raised and conclusively decided in the earlier round of litigation, the same cannot be allowed to be reopened in the subsequent proceeding being barred by the principles of *res judicata*.

The writ petitioner pursued the representations dated September 25, 2007 and January 10, 2017 in terms of the liberty granted by this Hon'ble Court in WPCT No. 225 of 2016. The issues raised in the said representations were similar and identical to the issues which had been conclusively determined in the earlier round of litigation. The concerned respondent authority in its order dated March 21, 2017 disposed of the said representations upon holding that the imposition of penalty was rational and at par with the Fundamental Rules and CCS (CC & A) rules as well as other statutory provisions. After going through the said order, we are of the considered view that the learned Tribunal was justified in holding that the said order passed by the respondent authority do not suffer from any infirmity.

The learned Tribunal was also justified in holding that since the writ petitioner superannuated on June 30, 2007 at a pay scale which was reduced on account of

penalty such reduced pay shall form the basis of his pension computation.

The writ petitioner pursued his representations made before the authorities taking advantage of the liberty granted by this Hon'ble Court in the earlier round of litigation. Since the issues raised in the representations are similar and identical to the issues finally determined in the earlier round of litigation, the respondent authorities were justified in passing the said order. The writ petitioner misused the liberty granted by this Court in the earlier round of litigation by initiating a second round of litigation which, in our view, amounts to gross abuse of the process of law. However, taking into consideration the fact that the writ petitioner is a retired person we refrain ourselves from imposing cost upon the writ petitioner for such frivolous litigation.

The writ petition, being WPCT 68 of 2020, accordingly, stands dismissed. 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.)