

26.07.2022
KC(63)

F.M.A. 2274 of 2016
Union of India and Ors.
-versus-
Goutam Ram

Ms. Aparna Banerjee.....For the appellants.

Mr. Achin Kumar Majumdar.....For the respondent.

The respondent was a constable in the Railway Protection Force. He was accused of mis-behaviour, being absent without leave, of gross negligence in discharging duty in an intoxicated condition between 23rd April and May, 2007. A charge-sheet with three articles of charge was drawn up against him on 17th July, 2007. In September, 2007, disciplinary proceedings was commenced which resulted on 7th December, 2007 in an order of compulsory retirement. The departmental appeal preferred by the respondent was dismissed on 2nd May, 2008. A review application against such dismissal met with the same fate on 14th January, 2009.

The respondent challenged this disciplinary proceedings in the instant writ application [W.P. 12462(W) of 2015] filed in this court. The principal ground of challenge was this.

Rule 153.8 of the Railway Protection Force Rules, 1987 is as under:

“Rule 153.8:

The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as ‘friend’) where in the opinion of the inquiry officer may, at the request of the party charged, put his defence properly. Such ‘friend’ must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a ‘friend’ in any other proceedings pending anywhere. *Such ‘friend’ shall, however, not be allowed to address the inquiry officer nor to cross-examine the witnesses.”*

Under this rule a charged member could not be represented by a lawyer in a disciplinary proceedings. He could be represented by a “friend” who could assist him to present his defence but had no right to address the inquiry officer or to cross-examine the witnesses for the prosecution.

This rule had been declared ultra vires the Constitution by a Special Bench of the Andhra Pradesh High Court on 7th September, 2001. An appeal from the said order of the Andhra Pradesh High Court was preferred before the Supreme Court.

However, during the pendency of this appeal on the basis of the said rule, the respondent was asked to put forward his defence in the disciplinary proceedings.

On 3rd March, 2008, the Supreme Court allowed the appeal of the Central Government and declared that the said rule was intra vires.

It was the contention of the respondent that throughout the pendency of the disciplinary proceedings, the judgment of the Andhra Pradesh High Court of 7th September, 2001 was operative. Thus, the rule was invalid, non-est and could find no place in the statute book. In those circumstances, the disciplinary proceeding, relying on such rule was vitiated.

The learned single judge in the impugned judgment and order accepted such contention of the respondent and allowing the writ application held:

“The order of the disciplinary authority and all orders passed pursuant thereto are set aside and quashed. As a consequence the respondents will be at liberty to proceed against the petitioner on the basis of the same charges once again. The Court is conscious that disciplinary proceedings that may be proceeded with against the petitioner as a consequence of this order, will be upon invocation of the said Rule as restored. However as the respondents had proceeded against a Rule declared ultra vires at the time they did, the petitioner cannot be denied this relief.”

We have no reason to depart from the findings made by the learned single judge.

During the entire period of pendency of the disciplinary proceedings, right up to the order of compulsory retirement of the respondent made on 7th December, 2007, rule 153.8 was nonest in the eye of law. Therefore, the initiation and continuation of the disciplinary proceedings, subject to that rule were illegal because it affected the right of the respondent to defend

himself in the disciplinary proceedings. Therefore, it has been rightly set aside by the learned single judge.

By the judgment and order of the Supreme Court dated 3rd March, 2008, the rule was held to be valid.

Now, what would be the effect of this order of the Supreme Court? It is not to be taken as if between 7th September, 2001, being the date of the judgment of the Andhra Pradesh High Court and 3rd March, 2008, the date of judgment of the Supreme Court, the rule was invalid and that it sprung back to life on 3rd March, 2008. The judgment of the Supreme Court is to be taken as a declaration of the validity of the said rule as if it was valid at all points of time. However, during the period of time the disciplinary proceedings was started and continued, the Supreme Court judgment was not there and the rule was non-est. Therefore, at that point of time the authority could not have started or continued the disciplinary proceedings under that rule.

To that extent, the impugned judgment and order is supported by us. But since after the Supreme Court judgment, rule 153.8 is deemed to have been valid at all points of time the disciplinary proceeding may be resumed against the respondent without the need to initiate it once again on the self-same charge-sheet and proceeded with in accordance with law.

The order of compulsory retirement of the respondent is set aside. The respondent shall be

reverted back to the same position in service he was at the time issuance of the charge-sheet on 17th April, 2007. Such action shall be taken by the appellants, if not already taken, within eight weeks of communication of this order.

The appeal (F.M.A. 2274 of 2016) is accordingly disposed of.

(I.P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)