

07.
25.01.2022.
Ct. No. 11.
F.B.

**FMA 1238 of 2021
with
IA No. CAN 1 of 2021**

(Via Video Conference)

**Sri Kuljit Singh Nanrah, Inspector, Railway
Protection Force
-Vs.-
Union of India & Ors.**

**Mr. Achin Majumdar,
Mr. Pratik Majumdar
..... For the Appellant.**

**Mr. R. N. Bag,
Mr. S. N. Dutta
..... For the Respondents.**

This appeal is against the order passed by the Hon'ble Single Judge in WPA 5553 of 2020 dated 8th March, 2021.

When the appellant has initially moved writ petition before the Hon'ble Single Judge challenging the Disciplinary proceeding initiated against the appellant, the Hon'ble Single Judge had passed following interim order on 22nd June, 2020.

"It is made clear that the respondent authority can continue with the disciplinary proceeding but no final order shall be passed till

the disposal of the instant writ petition against the petitioner”.

During the pendency of the writ application the Disciplinary Authority had completed the proceeding except passing final order. The respondents have filed an application before the learned Single Judge seeking leave to pass final order in the Disciplinary proceeding. On 8th March, 2021, the Hon’ble Single Judge has taken up for hearing the application filed by the respondents and after hearing the parties the Ld. Single Judge has disposed of the writ petition by passing the following order:-

“This Court notes that the Disciplinary Authority was approached by the petitioner with some of the aforesaid grievances and the same have not been considered. Since the petitioner has an effective alternative remedy in the form of departmental appeal under the RPF Act, this Court is inclined to allow the Disciplinary Authority to pass final orders prescribed under the aforesaid RFP Act. If the petitioner prefers an appeal the Appellate Authority shall take into consideration the grievances of the writ petitioner maintained hereinabove.

In addition thereto, the Appellate Authority may also consider the other grounds that the petitioner may urge before them.

It is made clear that this Court has not entered into any of the specific grievances raised by the petitioner since the Disciplinary Authority and the Appellate Authority may do so. The said Disciplinary Authority and Appellate Authority shall proceed in accordance with law and in terms of the RPF Rules, uninfluenced by and observation made hereinabove.

It is also made clear that in the event, any appeal being preferred by the petitioner against the order of the Disciplinary Authority, the Appellate Authority shall mandatorily dispose of the said appeal either within the time prescribed under the statute or as expeditiously as possible but preferably within a period of 45 days from receipt thereof.

The interim order dated 22.06.2020 already passed in the matter shall stand modified accordingly.

With the aforesaid observations, CAN 1 of 2020 is disposed of.

In view of the above, WPA 5553 of 2020 is also disposed of”.

The Counsel for the appellant has submitted that the Enquiry Officer was appointed from out of the jurisdiction of the Disciplinary Authority and charge-sheet has been filed on the direction of the Higher Authority and no opportunity was given to the appellant by the Disciplinary Authority.

The Counsel for the appellant further contended that the Hon’ble Single Judge while disposing of the writ application dated 8th March, 2021 has not considered the earlier order dated 22nd June 2020, wherein the Hon’ble Single Judge has directed the Authority to file affidavit-in-opposition but the Authorities have not filed any affidavit and without the affidavit, the Hon’ble Single Judge has disposed of the writ application.

The Counsel for the respondents informed this Court that in terms of the order passed by the Hon’ble Single Judge dated 8th March, 2021, the Disciplinary Authority had passed final order by imposing penalty upon the appellant by removing the appellant from service.

Being aggrieved with the order of the Disciplinary Authority, the appellant had preferred an

appeal before the Appellate Authority and accordingly the Appellate Authority has also dismissed the appeal filed by the appellant. It is further contended that the appeal preferred by the appellant has become infructuous and the appellant has now separate cause of action.

Considered the submissions of the learned Advocates appearing for the parties and materials available on record.

The Disciplinary Authority had initiated departmental proceeding and aggrieved with the same the appellant had preferred the writ application.

The Hon'ble Single Judge by order dated 22nd June, 2020 has not granted any stay of the Disciplinary proceeding but only passed an order directing the Disciplinary Authority not to pass final order till the disposal of the writ application. As no order of stay was passed and accordingly the appellant had participated in the Disciplinary proceeding and on conclusion of the Department proceeding, the respondent authorities have preferred an application before the Hon'ble Single Judge seeking for modification of the order dated 22nd June, 2020 and prayed for allowing the Disciplinary Authority to pass final order. The Hon'ble Single Judge has allowed the Disciplinary Authority to pass final

order and given liberty to the appellant to prefer an appeal before the Appellate Authority by raising all the grievances before the Appellate Authority. Being aggrieved with the order passed by the Disciplinary Authority, the appellant had preferred an appeal and the Appellate Authority had dismissed the appeal.

In view of the facts as mentioned above, this Court is of the view that the Appellate Authority had already dismissed the appeal preferred by the appellant. The appellant has got new cause of action to challenge the order of the Appellate Authority before the appropriate forum if so advised and as such no order can be passed in the instant appeal.

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thus stand **dismissed**.

Since affidavits are not invited, all other allegations are deemed to be denied.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)