

25.02.2022
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Sl. No. 05
Ct. No. 05

WPA 13856 of 2021

[Via Video Conference]

Soumen Saha
-Versus-
The Visva Bharati & Ors.

Mr. Anjan Bhattacharya
..... for the petitioner

Mr. Pranit Bag
Mr. Anuj Kr. Mishra
..... for the University

The petitioner is a Section Officer of the Visva Bharati University and prays for quashing of an order dated 24th August, 2021 of the Registrar (Acting) of the University by which the petitioner was imposed with the major penalty of Compulsory Retirement from service under the Service Rules for Non-Academic Employees of Visva Bharati.

The case against the petitioner commenced from an Article of Charge in relation to the petitioner's involvement in misappropriation of funds at Bhasha-Bhavana and initiation of disciplinary proceedings against the petitioner pursuant to a report of the Karma-Samiti (Executive Council) as resolved in its meeting dated 3rd July, 2020 and communicated by the

Registrar on 4th July, 2020. A preliminary report of the Enquiry Committee on the alleged misappropriation of funds resulted in a recommendation that punitive steps shall be initiated against certain persons of the University.

The final report of the Enquiry Officer dated 7th May, 2021 forms the crux of the controversy of the present case. In the said report, the petitioner has been found to have helped others in misappropriating the funds of the University and that the petitioner did not take any initiative in discontinuing misappropriation of funds of the University. According to learned counsel appearing for the petitioner, the report of the Enquiry Officer does not contain any finding of culpability in relation to the petitioner. Counsel also submits that the report mentions that the petitioner did not receive any financial benefit from the defalcated funds. It is also submitted that one Professor Narottam Senapati was let off with a minor penalty although the Enquiry Officer found the involvement of Professor Senapati in the financial wrong doing.

Learned counsel appearing for the University relies on the findings in the Enquiry Report therein with regard to the petitioner's

involvement in the defalcation of funds. Counsel submits that the relevant rules under the Service Rules for Non-Academic Employees warrant imposition of major penalty of compulsory retirement against the petitioner. It is submitted that the University has the discretion of the nature of punishment to be imposed on the non-academic employees.

From the submissions made on behalf of the parties, the controversy in the present case appears to be centred around two issues; first, whether the major penalty of compulsory retirement could have been imposed on the petitioner and second, whether Professor Narottam Senapati could be let off with a minor penalty for the same offence.

The findings against the petitioner in the Enquiry Report should be considered for the first issue. The conclusion with regard to the petitioner is that the petitioner helped others in misappropriating the funds of the University and did not take any steps to stop such misappropriation despite being the Section Officer. The conclusion also mentions that the petitioner was aware of certain colleagues being guilty of the offence and that it cannot be said

that the petitioner had no role in the process of misappropriation of funds. The Enquiry Report however categorically states that there is no evidence wherefrom it can be concluded that the petitioner derived any financial benefit from the funds. The Enquiry Officer concludes that the charge against the petitioner is hence proved. The bills in connection with the misappropriation of funds which are on record do not bear the signature of the petitioner and hence corroborate the finding that there is no evidence to show that the petitioner had any active role in misappropriating the funds or deriving any financial benefit from such wrongdoing.

Rule 49 of the Service Rules for Non-Academic Employees of the Visva-Bharati provides for penalties. Rule 49 delineates minor and major penalties including censure, withholding of promotion under the former and compulsory retirement under the latter. Rule 49(vii) provides for compulsory retirement. Rule 52 - Procedure for imposing penalties and action thereunder - sub-rule (1) provides that no order imposing any penalty specified in Rule 49 clauses (v) to (ix) shall be made except by holding of an enquiry as provided in Rule 53. Rule 53 - Action

on the enquiry report - provides that the disciplinary authority may impose penalty if it agrees with the report of the enquiry in a manner which it thinks to be just and proper.

The above rules read together indicate that the Disciplinary Authority has the discretion of imposing minor or major penalty as it thinks fit provided it agrees with the requirement of the Enquiry Authority. In the present case, the Enquiry Report states in no uncertain terms that there is no evidence of the petitioner financially benefitting from the misappropriation. There is also no statement that the petitioner was actively involved in his personal capacity in the financial wrongdoing as opposed to some other persons who have been named in the Enquiry Report. The discretion on the Disciplinary Authority to impose penalty as provided under Rule 53 must be exercised judiciously having regard to all the attending circumstances. Since the major penalty of compulsory retirement under Rule 49 (vii) is a drastic measure, it is incumbent on the authority to assess the correctness of the decision from the attending circumstances. The attending circumstances in the present case, is the fact of

Professor Narottam Senapati being let off with a minor penalty for the same offence.

It is evident that Professor Senapati has been imposed with a minor penalty in the form of a direction to refund the amount which was drawn by raising fake bills in the name of a fictitious person. The Enquiry Report indicates that although Professor Senapati did not have any direct role in the process of misappropriation of funds and did not receive any direct or indirect benefit out of the same, the evidence shows that he used to sign the bills for releasing payment in favour of the staff. The conclusion of the Enquiry Report is that being the head of the institution, Professor Senapati should have shown more diligence in handling the financial matters although he did not benefit from such misappropriation. The Report concludes that Professor Senapati cannot be given a complete clean chit in this regard.

The contents of the Enquiry Report show that Professor Senapati had actually signed the bills. Therefore, the stand of the Disciplinary Authority in imposing minor penalty on Professor Senapati despite his actually signing the bills and

imposing major penalty on the petitioner when the petitioner had no role in signing the said bills, appears to be inconsistent, disproportionate to the petitioner's involvement and an improper exercise of discretion by the Disciplinary Authority. It is evident that in imposing a major penalty of compulsory retirement to the petitioner, the Disciplinary Authority failed to take into consideration the relevant circumstances of the case including the petitioner's role in the misappropriation as compared to the role of Professor Senapati in the same wrongdoing. Even if Professor Senapati is governed by different Service Rules, there should be consistency in the decision of the University particularly where the Rules are silent on the circumstances in which the penalty should be minor or major. The petitioner should hence be given the benefit of the silence and ambiguity in the Rules.

In view of the above reasons, this Court finds substance in the contention urged on behalf of the petitioner and WPA No. 13856 of 2021 is allowed by quashing the impugned order dated 24th August, 2021 imposing the major penalty of compulsory retirement on the petitioner. This order shall not prevent the University from taking

a fresh decision based on the Enquiry Report under the relevant Act and Regulations.

The Writ Petition is disposed of in accordance with the above.

Urgent photostat certified copies, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)