

36 23.11.22

Ct. No. 04

Akd

WP.CT 86 of 2022

Nirmal Kumar Saha
Vs.
Union of India & Ors.

Mr. Ashok Chakraborty,
Mr. Ujjal Roy,
Mr. Arpa Chakraborty.
 ... for the petitioner.
Mr. Soumak Bera.
 ... for the Union of India.

The challenge made to an order dated 24th March, 2022 passed by the Central Administrative Tribunal, Kolkata Bench, in O.A. 350 of 2020 is restricted to the ultimate decision taken by the Tribunal in remanding the matter to the appellate authority to pass a reasoned and speaking order within a time frame.

On the earlier occasion a plea was taken that the Tribunal does not enjoin the power to remand any case, but when the matter is taken up today, the learned Advocate for the petitioner fairly submits that such point cannot be substantiated. However, he submits that there was no necessity of remanding the matter to the appellate authority on the points recorded therein, as those either relates to pure question of law or the facts pleaded by the respective parties.

On the other hand, it is submitted that there was sufficient material for deciding the case finally and there is no justification in remanding the matter to the appellate authority.

It is no doubt true that any litigation reached to the Court must receive a final adjudication and only when a higher forum found that there is something which is required to be considered based on further factual matrix, to secure the ends of justice the order

of remand may be made. However, higher forum should avoid remanding the matter to the authority below it, if the materials are sufficient enough to decide the said point.

Interestingly the order of remand was based on three counts; firstly the provision mentioned in one of the article of charges does not find place in the CCS (Conduct) Rules, 1964 and, therefore, the legality and the propriety of the same is highly questionable. Such being the consideration and if it appears that there is no such provision existing in the Book or the statute applicable in this regard, the Tribunal could have conveniently take a decision thereupon, that is just and proper and there was no necessity to remand the case to the appellate authority to consider the same. The moment it is found that there is no existence of such provision, it is a mere idle exercise to remand the matter to the appellate authority, who may face the same situation and the consequence to follow from such score.

Secondly the remand is made on the plea that the first penalty order was issued by the authority who is not a competent authority under Article 14 of the CCS (CCA) Rules, 1965. Though the Tribunal found that the respondents have clarified the position in the pleading but there was no supporting documents in this regard, yet ventured to remit the matter back to the appellate authority to consider the same. The pleading was sufficient enough to consider the aforesaid point, which is primarily based on the proposition of law and obviously on the disclosure of the facts and, therefore, we do not find that once the respondent authorities have not included the supporting materials, the implication of such pleading and the reliability thereupon can be

adjudicated and there was no justification in making remand in order to ascertain competence of the officer. Even apart the Tribunal held that the attending facts are galore but decided to remand the matter to the appellate authority, which in our opinion cannot be justified.

Thirdly the Tribunal quoted an excerpt from the DG, P&T No. 101/2/80-DSC. II dated 1st October, 1980 highlighting to give weightage to the points agitated before the appellate authority and the decision to be made in this regard. The Tribunal abruptly jumped to the conclusion after quoting the said excerpts without recording its satisfaction to the points canvassed before it. Even apart such points were taken before the Tribunal and there are ample materials available from the pleadings and the documents produced by the respective parties to decide the same. It would be a mere prolongation and elongation of the litigation in remanding the matter to the appellate authority.

In view of the above, we find that the order of remand cannot be sustained. The order is thus quashed and set aside.

The Tribunal is requested to dispose of the proceeding within two months from the date of the communication of this order.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

