

14.02.2022

Court : 04
Item : 18
Matter : **MAT**
Status : DISMISSED
Transcriber: nandy

WPCT 663 of 2006

with

CAN 2 of 2022

(CAN 8219 of 2015)

with

CAN 3 of 2022

(CAN 8236 of 2015)

Union of India & Ors.

Vs.

Narendra Prasad

Mr. Naba Kumar Das, Advocate

.....for the Appellants

Mr. Bharat Chandra Simai, Advocate

.....for the Respondent

CAN 3 of 2022

(CAN 8236 of 2015)

This is an application for condonation of delay of 463 days in filing an application for restoration of the writ-petition, which was dismissed for default on April 7, 2014.

After hearing the respective counsels and on perusal of the averments made in the instant application disclosing the reasons for non-appearance of the petitioner on the said fateful day, we are of the opinion that the petitioner was prevented by sufficient cause in not appearing on the date when the matter was called on dismissed for default.

Accordingly the application for condonation of delay being **CAN 3 of 2022** (CAN 8236 of 2015) is **allowed**.

CAN 2 of 2022
(CAN 8219 of 2015)

Since the same explanation has been offered in an application for restoration of the instant writ-petition, we thus find that the petitioner was prevented by sufficient cause and, therefore, the application for restoration being **CAN 2 of 2022** (CAN 8219 of 2015) is **allowed**.

The writ-petition is **restored** to its original file and number.

WPCT 663 of 2006

Upon consent of both the Counsels, the main writ-petition is taken up for hearing.

Mr. Das, learned Advocate, appearing for the writ-petitioner/Union of India, submits that the findings made by the Tribunal in the impugned order are inconsistent and the ultimate relief, which has been granted, was beyond the scope and purview of the tribunal application. It is further submitted that the Tribunal, in fact, have found some elements against the delinquent and held that the responsibility should be fixed which, in fact, has been completely overlooked while extending the final relief.

We are not impressed with the aforesaid submission for the simple reason that such finding does not run counter to the ultimate decision made

by the Tribunal. It was made as a passing remark in order to justify the findings made in the preceding sentence and, therefore, cannot be divided or segregated for the purpose of maintaining the writ-petition. The moment the findings made in the order is challenged in an appropriate proceeding, it is the salient duty of the Court to consider the order as a whole and not in piecemeal.

The fact remains that the delinquent was a Catering Inspector in the South-Eastern Railway and responsibility was fixed upon him for raising an excessive debt for the consumption of kerosene oil and Salpata. It appears that certain debits, so raised, were subsequently dropped and the rest of debits were processed with the approval of the higher authority. The petitioner raised an issue that there has been a steep rise in the consumption of the kerosene oil and Salpata and, in fact, invited the attention of the higher authority i.e. the Divisional Commercial Manager (DCM), who found the concerned raised by the delinquent to be true. In fact, the DCM had conducted an exercise through practical demonstration by deputing a team and ultimately approved the higher consumption.

However, the Finance Department did not accept such debits and raised an issue not only in the garb of deliberate action of raising such debits

but have gone to the extent that the DCM was not the competent authority to grant approval for such expenditure. A disciplinary proceeding was initiated by appointing an Enquiry Officer who ultimately found that the article of charges has not been proved against the delinquent. It is pertinent to record that immediately upon raising an issue by the Finance Department, the delinquent was put under suspension and such order of suspension was lifted upon a deposit of Rs.Two Lakhs and odd.

After the acceptance of the enquiry report by the disciplinary authority, the delinquent made a request to disburse the said amount which he deposited while under the order of suspension which was disposed of directing the respondent to refund the amount with all consequential benefits. However, while considering the same, another issue was raised by the authority regarding the fixation of responsibility and ultimately the responsibility was fixed upon the petitioner which was again challenged before the petitioner by the delinquent and by the impugned order, the Tribunal dismissed the decision of the authority taking into account the report and the facts finding committee i.e. the enquiry report as well as the decision of the disciplinary authority and directed refund of the said amount.

Once the higher authority was aware of the excess consumption of the kerosene oil and Salpata and in fact, a team was constituted and demonstration were made and later on accepted by the DCM, it is not proper on the part of the Railway Administration to suggest that the order of the Superior should have been devoid of the authority and as such Superior is incompetent to grant such approval. No action has been taken against the Superior Officer and the entire burden is put upon the shoulder of the delinquent.

We thus do not find any infirmity and illegality in the order of the Tribunal in granting the ultimate relief to the delinquent.

Accordingly, the writ-petition being **WPCT 663 of 2006** is **dismissed**.

However, there shall be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

