

01.09.2023
sayandeep
Sl. No.12
Ct. No. 12

FMA 484 of 2019

Union of India & Ors.
-Versus-
Radhe Prosad

Mr. Ashok Bhowmick
Ms. Puja Tripathi

.....for the appellants.

Mr. Achin Kumar Majumder
Ms. Ananya Adhikary

.....for the respondent

The respondent retired from service on 31st January, 2018 from the service of the appellant as Sub-Inspector of Police of Railway Protection Force. One day before his retirement, a charge memo dated 30th January, 2018 was issued by 4th appellant to the respondent. Again another charge-sheet was issued by 4th appellant on 7th February, 2018 to the respondent. The respondent challenged both the charge memos by filing writ petition being W.P. 4342(w) of 2018 on the ground that charge memos were issued by the incompetent authority and not by disciplinary authority. The second contention of the respondent is that there is no provision in Railway Protection Act and Rules to continue the disciplinary proceedings against the respondent after his retirement. The appellants did not file any affidavit-in-opposition. The learned Judge considering the failure on the part of the appellant to file affidavit-in-opposition in spite of opportunity being

given and none appears on behalf of the appellants proceeded to hear and dispose of the writ petition in the absence of appellant.

The learned Judge accepting both the contention of the learned counsel appearing for the respondent allowed the writ petition and directed the appellants not to proceed with the departmental proceedings any further and pay the retirement benefits to the respondents.

Against the said order, the present appeal is filed.

The learned counsel appearing for the appellants contended that learned Judge in a hurried manner disposed the writ petition without giving opportunity to the appellant to file affidavit-in-opposition. The writ petition is not very old and the learned Judge ought to have given one more opportunity to the appellant to file their affidavit-in-opposition. The 4th appellant is the disciplinary authority as per the provisions of Railway Protection Force Act, 1957. The appellants followed the provisions and issued charge memo and prayed for allowing the appeal.

Heard learned counsel appearing for the appellants and respondent and perused entire materials on record.

From the materials on record, it is seen that appellants were given opportunity to file affidavit-in-opposition. They did not file any affidavit-in-opposition

putting forth their defence to the claim of the respondent.

Further on the date of hearing nobody appeared on behalf of the appellants and therefore naturally no request was made for time to file affidavit-in-opposition. The appellants ought to have been vigilant in preparing and filing their affidavit-in-opposition within the time limit granted or at least on the date of hearing requested for further time for filing affidavit-in-opposition. When there is no representation for the appellant they cannot expect the Court to wait for their appearance and file affidavit-in-opposition. The learned Judge in such circumstances was right and proceeding to hear and dispose of the writ petition on merits.

From the impugned order of the learned Single Judge, it is seen the learned Judge has considered Schedule III of the Railway Protection Force Rules, 1987 which enumerate the disciplinary authority in respect of employees of the appellants. As per the said Schedule, the 4th appellant, Assistant Security commissioner is not the disciplinary authority in case of the respondent who was working as Sub-Inspector of police. The appellants have not raised any grounds disputing the finding of the learned Judge that 4th appellant is not the competent authority to issue charge memo to the respondent.

For the above reasons, the appeal fails and dismissed without any order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)