

31.08.2023
sayandeep
Sl. No. 07
Ct. No. 12

MAT 502 of 2012

Union of India & Ors.
-Versus-
Sri Manoranjan Rout & Ors.

Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick

.....for the appellants

Mr. Sandipan Banerjee
Mr. Pinaki Ranjan Chakraborty

.....for the respondents

The appellant has come up with the present appeal challenging the order of the learned single Judge dated 28th December, 2011 made in writ petition No. 5790 (w) of 2010. The respondent No. 1 in response to the advertisement published by the appellant applied for appointment to the post of Sub-Inspector(Mechanical) in CISF on 19th November, 1997. In the application submitted by the respondent No. 1, he mentioned that he belongs to “Paiko” community which is declared as other backward community in Orissa. He was successful in selection and he was appointed as Sub-Inspector (Fire), Durgapur Thermal Power Station on 01.12.1999. While so an enquiry was conducted with regard to genuineness of the community certificate produced by the respondent No. 1. According to the appellant, the certificate produced by respondent

No. 1 was fake and forged one and hence they lodged a complaint to the concerned police Station. The respondent No. 1 was arrested. In view of the same, the respondent No. 1 was suspended from service as he was imprisoned for more than 48 hrs. A charge-sheet was filed in the criminal case. While the said case was pending, the appellant initiated departmental proceedings against the respondent No. 1 who filed writ petition No. 16577(w) of 2001 for stay of the departmental proceedings till the disposal of the criminal case alleging that facts in both departmental proceedings as well as criminal proceedings are one and the same. This Court by the order dated 13.02.2002 stayed the departmental proceedings until further orders or till the disposal of the criminal case. After contesting in the criminal case by the Judgment dated 31st August, 2005, the learned Judicial Magistrate 3rd Court, Durgapur acquitted the respondent No. 1. After the Judgment in criminal case, the appellant proceeded with departmental enquiry by appointing a new enquiry officer by order dated 24th October, 2005 to conduct the enquiry from the stage of the reply of the respondent No.1. The respondent No. 1 sent a representation dated 9.11.2005 to the Inspector General, CISF Northeast Zone and prayed for revocation of the order of suspension and to drop the departmental proceedings and prayed for reinstatement in the light of the order of

the acquittal in the criminal proceedings. The appellant neither considered the said representation nor rejected but proceeded with the departmental proceedings. Hence the respondent No. 1 again filed another writ petition being WP No. 21233(w) of 2005 to quash the departmental proceedings. This Court by the order dated 22 November, 2005 directed the appellant to proceed with the departmental proceedings but not to pass any final order. After completion of departmental proceedings and after orders of this Court dated 28th August, 2009, the appellant passed final order dated 18th November, 2009 removing the respondent No. 1 from service. The respondent No. 1 challenging the said order of removal filed appeal which was rejected by the appellate authority. Challenging the order of disciplinary authority as well as appellate authority, the appellant filed the present writ petition No. 5790 of 2010. The appellants filed affidavit-in-opposition and opposed the said writ petition denying of various averments and allegations made by the respondent No. 1.

The learned Judge considering the materials placed before him especially the Judgment of Judicial Magistrate, 3rd Court, Durgapur, Burdwan in G.R. No. 188 of 2000(T.R. No. 33 of 2004) set aside the order of disciplinary authority as well as the appellate authority and allowed the writ petition.

Against the said order, the appellant has come up with present appeal.

Heard learned counsel for the parties and perused the entire materials on record.

The learned counsel appearing for the appellant contended that signature in community certificate is not genuine. The respondent No. 1 was not acquitted honourably by criminal Court but benefit of doubt was given. The learned Judge erred in holding that witnesses mentioned in the charge memo were not examined. The respondent No. 1 was given every opportunity to examine the witnesses. Mr. Srinivasan Kumar, Assistant Commandant made discreet enquiry and submitted confidential report. The enquiry officer sent several notice to the Mr. Srinivasan Kumar but he could not appear as he was in abroad at that time. The learned Judge failed to consider that departmental proceedings and criminal proceedings are entirely different and not considering the acquittal in criminal Court will not vitiate the order of the disciplinary authority.

Considering the materials available on record and the impugned order of the learned Judge, we hold that above submissions are not acceptable for following reasons.

The commandant who gave a complaint against the respondent No. 1 had given such complaint as per

the instructions of the Head Quarters only. Mr. Srinivasan Kumar, Assistant Commandant who made preliminary enquiry and filed confidential report based on which proceedings were initiated against the respondent no. 1 was not examined either in criminal case or in the departmental proceedings. When Mr. Srinivasan Kumar not examined in the domestic enquiry, his report is not proved and cannot be relied on by the appellant. The Tahasildar who denied issuing the community certificate produced by the respondent No. 1 was not examined and no material is placed to show that signature in the community certificate is forged one. The Tahasildar who was examined as PW5 before the criminal Court gave contradictory statement in the chief examination and cross-examination. Without referring to any records, he marked exhibits 3 to 6 and admitted that he was not aware of these documents. In the cross-examination, he has stated that he issued a report to the effect that community certificate of respondent No. 1 is genuine. The evidence of PW6 and PW7, the investigating officers were not accepted by the criminal Court.

Considering the above findings, the contentions of the learned counsel appearing for the appellant that the respondent No. 1 was not acquitted on merits is contrary to the merits which was elaborately considered by the learned Single Judge and extracted relevant

portions in the impugned order. It is true that departmental proceedings and criminal proceedings are entirely different and operate in the different sphere. The proof in the departmental proceedings is not strict a criminal case. It is sufficient if authorities proves the charges by preponderance of probabilities. There must be some evidence to come to the conclusion that charges are proved in the domestic enquiry. It is also true that acquittal in criminal Court is not binding in the disciplinary authority but disciplinary authority must consider the reasons given in the Judgment for acquitting the charged employee on merits.

From the above materials on record, it is clear that no acceptable evidence was placed in domestic enquiry to hold that respondent No. 1 has produced fake and false community certificate. The disciplinary authority as well as appellate authority failed to properly consider the materials placed before them and erroneously passed the order of dismissal and confirming the said order of dismissal. The learned Judge has given cogent and valid reasons for setting aside both orders.

There is no error in the order of the learned Single Judge setting aside the order of the dismissal of the disciplinary authority as well as appellate authority.

For the above reasons, appeal fails and dismissed.

There shall be no 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.)