

11.01.2023

WPCT 69 of 2022

Court : 04
Item : 20
Matter : WPCT
Status : DO
Transcriber: NANDY

Nihar Ranjan Mallik
Vs.
The Union of India & Ors.

Mr. Kalyan Halder, Advocate
Ms. Chitra Som (Basu), Advocate

.....for the Petitioner

Mr. Ajit Kumar Mishra, Advocate
Mr. Abhishek Dey, Advocate

.....for the Respondent No. 1 & 2

Mr. Anil Kumar Gupta, Advocate

.....for the BSNL

The tribunal application filed by the petitioner was disposed of vide order dated 08.06.2022 by the Central Administrative Tribunal, Kolkata Branch directing the authorities to complete the disciplinary proceeding within the specified time.

The aforesaid tribunal application was taken out for declaration that the moment the warning has been issued by the competent authority upon consideration of the investigation report as well as the evidence produced in this regard, the same should be treated to have close the issue finally and the disciplinary action thereupon is impermissible. It was further contended before the Tribunal that the article of charges on the basis of an anonymous complaint is impermissible in law. Lastly it is submitted that the entire proceeding initiated against the petitioner is required to be quashed and the orders passed by the authorities thereupon should not have been acted upon.

Admittedly, the petitioner is in service which has been found by the Tribunal; otherwise also it is nobody's case that the petitioner has attained superannuation. The plea of the petitioner that the warning tantamounts to

penalty has not been accepted by the Tribunal relying upon the office memorandum dated December 6, 2016 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training Establishment, New Delhi. In the said office memorandum it is indicated that the letter of warning is an action and shall not be regarded as a penalty and, therefore, there is no impediment on the part of the authorities in considering the candidature of such employee for promotion.

Such being the position, the aforesaid office memorandum was issued to dispel any doubt in the minds of an employee that the letter of warning or caution may tantamount to penalty and jeopardizes the right to claim a promotion. So far as the other questions relating to reopening of a disciplinary proceeding on the selfsame facts, the Tribunal did not make any final opinion thereupon as the disciplinary proceeding was pending before the authority.

We also do not want to enter into such arena as the observations might have some impact on the ultimate decision taken by the disciplinary authority. The scope of interference by the Court/Tribunal against the issuance of article of charges is very limited and the Court should be slow and circumspect in interfering at this stage as the authority did not arrive at the final conclusion. There is a possibility that the delinquent may be exonerated from all charges or vice versa.

By filing the instant writ-petition, the issues are attempted to be enlarged and the points which were not taken before the Tribunal were sought to be agitated.

The reason for recording the aforesaid observations can be supported from submission of the petitioner that there has been a complete infraction of the principle of natural justice as various documents relied upon by the disciplinary authority were not served upon him.

Be that as it may, in course of the hearing, the learned Advocates appearing for the BSNL as well as for Union of India, in unequivocal voice submitted that pursuant to the direction passed by the Tribunal as reflected in the impugned order, the disciplinary proceeding has reached to its logical conclusion and the final order had been passed on October 22, 2022.

Learned Advocate appearing for the petitioner submits that he has taken out an application in the instant petition disclosing the aforesaid facts and also annexed the copy of the order passed by the disciplinary authority so that the challenge to the said order can also be taken as a ground in the instant writ-petition. The Tribunal was approached at a point of time when the disciplinary proceeding was pending and the subject matter of challenge was restricted to initiation of a disciplinary proceeding and the action of the competent authority in resuscitating the issue which was set at naught by reprimanding the petitioner with the letter of warning and/or action. Since the final order has been passed, it gives rise to a new cause of action and it is not expected that the petitioner would jump the forum and challenge the said order as the writ-petition was pending before this Court.

In view of the subsequent facts disclosed in the

instant proceeding, we do not find any justification in going into the nitty-gritty of the findings made by the Tribunal on the aforesaid issues and we feel that all such point can be conveniently agitated before the appropriate forum if the petitioner chooses to challenge the final order imposing penalty.

We, therefore, made it clear that the findings recorded in the impugned order shall not operate as *res judicata* in nor to be used as an stopple in any proceeding taken out by the petitioner and the same shall be decided independently and on the basis of the merit of the said case.

The writ-petition being **WPST 69 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)