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Ct. No. 04

Akd

WP.CT. 70 of 2022

Nigamananda Sikder

Vs.

Union of India & Anr.

Mr. Kalyan Halder,

Ms. Chitra Som (Basu).

... for the petitioner.

Mr. Ajit Kumar Mishra,

Mr. Abhishek Dey.

... for the respondent nos.

1 & 2.

Mr. Anil Kumar Gupta.

... for the BSNL.

On the basis of pseudonymous/anonymous letter received by the Department the proceeding was contemplated and enquiry was held against the petitioner and the others named therein. It appears from the record that the enquiry officer after marshaling the facts and the evidence produced before it arrived at the conclusion that the charges framed against the petitioner were not proved and forwarded such report to the disciplinary authority to form an independent opinion thereupon.

It is also not in dispute that the disciplinary authority agrees with the findings of the enquiry authority, yet called upon the petitioner to make a representation within a specified time with clear stipulation that the coercive action shall be taken in the event of a default.

We are unable to comprehend the manner in which the report of the enquiry authority as well as the concurrence of the disciplinary authority was communicated to the petitioner. The moment the disciplinary authority agrees with the report of the enquiry authority that the charges have not been proved against the delinquent, there is no necessity of putting any condition that if the representation is not

filed the delinquent would be liable for an appropriate action.

Be that as it may, we leave it to the wisdom of the authorities to ponder upon before communicating the report of the enquiry authority and the decision of the disciplinary authority. It appears that the petitioner attained superannuation and a further disciplinary proceeding was intended to be initiated against him resuscitating the said issue and the challenge was made to the Tribunal to the article of charges served upon the petitioner.

Obviously the foundation of such challenge is based upon the fact that the moment the enquiry authority did not find that the charges have been proved upon considering the evidence adduced before it and the disciplinary authority accepted such finding, the proceeding cannot be re-initiated against the petitioner on such charges, as it would fall upon the findings of the enquiry authority as well as the disciplinary authority.

The Tribunal did not find any impediment on the part of the authority in initiating a further proceeding despite the fact that the enquiry authority as well as the disciplinary authority were unison of the decision that the charges have not been proved. It appears before the Tribunal that the proceeding is pending before the reviewing authority and, therefore, the direction was passed upon the said authority to conclude the said proceeding within a specified time.

The instant writ petition is filed challenging the order of the Tribunal, as according to the writ petitioner, there is no necessity to proceed on the basis of the said charge sheet, as the matter was foreclosed at an earlier point of time. It appears that the reviewing authority assumes power in relation to

the first proceeding and was in seisin of the matter. During the pendency of the instant writ petition the reviewing authority has passed the final order, which, in our opinion, gives a fresh cause of action.

Though the petitioner wanted to bring the aforesaid fact by way of an application, yet we feel that it would be proper to approach the appropriate forum. As the petitioner shall be deprived of a forum to challenge the order of the Tribunal, we, therefore, held that in the event the petitioner chooses to challenge the final order passed by the reviewing authority before the appropriate forum, the findings made in the impugned shall neither operate as res judicata nor estoppel against the petitioner and the said forum would decide the matter on merit in accordance with law.

The writ petition is thus disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)