

19.06.2023
(as/akd)
Ct.No.12
05

WPCT 62 of 2019

Indian Railway
-vs-
Smt. A. Rajeswari & Ors.

Mr. Partha Ghosh,
Mr. Ajay Chaubey.
...for the Petitioner/Railway.

Mr. Kedareswar Chakraborty,
Mr. Saptarshi Chakraborty.
...for the Respondents.

From the materials on record, it is seen a charge memo was issued to one A. K. Rao who was working as Head Clerk at that time. According to the petitioner, a contract for supply of goods and parcel can be granted to the maximum period of five years only. A. K. Rao, Head Clerk was custodian of files relating to contract. In respect of two contracts granted to Dynamic International, contract was manipulated and the period was incorporated as 20 years from 2001 to 2021. The original period was erased and the period of twenty years was inserted in that place.

In respect of these two contracts, a vigilance enquiry was conducted and a disciplinary proceeding was initiated against A. K. Rao. The said A. K. Rao was charged that he in connivance with Dynamic International manipulated the contract that contract was for twenty years instead of five years. The

disciplinary proceeding was conducted and the enquiry officer submitted a report that charges levelled against A. K. Rao were proved. The disciplinary authority based on enquiry report dismissed A. K. Rao from service.

The appeal and Revision filed by the said A. K. Rao were also dismissed. A. K. Rao filed OA 1244 of 2011 challenging the order of dismissal passed by the disciplinary authority and the dismissal of appeal.

A. K. Rao challenged the proceedings alleging that charge memo issued after nine years of alleged misconduct is not maintainable; enquiry was conducted in violation of principles of natural justice and mandatory provisions of law were violated.

The petitioner filed their objection and resisted the claim of A. K. Rao. Pending Original Application, A. K. Rao, the employee died on 25th May, 2014 and as per the order of the tribunal his legal heirs were impleaded as parties in the said Original Application. The tribunal considering the judgment of the Hon'ble Apex Court and applying the ratio in the said judgment held that in the facts of the present case the delay in initiating disciplinary proceedings does not vitiate the same as charge memo was issued after preliminary enquiry and vigilance enquiry.

As far as the case of A. K. Rao that the principles of natural justice were violated by not permitting him to cross-examine PW1 and the enquiry was concluded ex-

parte, the Tribunal accepted the case of the employee and held that failure on the part of the enquiry officer to permit the employee to cross-examine PW1, vitiated the enquiry proceedings.

The Tribunal considering the additional fact that Senior DCM/KGP who attested the contract was imposed minor penalty, held that the punishment imposed on A. K. Rao is disproportionate. The Tribunal considering the death of the employee, A. K. Rao directed the revisional authority to consider the revision on merits and to pass a reasonable order on the quantum of punishment.

The learned Counsel appearing for the respondents submitted that another employee, Narendra Prasad who was also chargesheeted and dismissed from service filed Original Application and the Tribunal set aside the order of dismissal and remanded the matter to the revisional authority. The revisional authority considering the same modified the punishment of dismissal from service into compulsory retirement.

From the above, it is seen A. K. Rao was not given opportunity to cross-examine PW1. Further, Senior DCM/KGP who attested the contract was imposed only a minor punishment. The punishment imposed to other employee Narendra Prasad was modified to compulsory

retirement. These facts were not disputed by the petitioner.

The Tribunal considering the various judgments on issue has remanded to the revisional authority for consideration on quantum of punishment as the Tribunal is of the view that punishment imposed on A. K. Rao is disproportionate especially when Senior DCM was imposed minor punishment.

Considering the fact that one of the employee was imposed minor punishment of reduction of pay and dismissal of another employee was modified as compulsory retirement, this Court finds there is no error in the said order passed by the Tribunal. In view of the same, the order of Tribunal does not warrant any interference by this Court.

The petitioner-railway is directed to comply with the order of the Tribunal within three months from date.

The writ petition fails and is dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)

