

WP.CT 141 of 2015

(Union of India & Ors. Vs. Dr. Anjan Dasgupta)

Mr. Kushi Prasun Chatterjee

..... For the petitioners

Mr. Phatick Chandra Das

Ms. Soma Chowdhury (Bandhu)

..... For the respondent

The present writ petition has been preferred challenging an order dated 16th December, 2014 passed by the learned Tribunal in the original application being OA No. 55 of 2011 preferred by the applicant/respondent herein challenging, *inter alia*, an order dated 16th January, 2009 passed by the General Manager, Eastern Railway, Calcutta rejecting the applicant's claim towards disbursement of settlement dues in the light of the order dated 5th October, 2007 passed by the learned Tribunal in the earlier original application being OA No. 189 of 2017 preferred by the applicant challenging, *inter alia*, an order dated 7th January, 2005 passed by the Chief Accounts Officer, Eastern Railway, Calcutta.

Mr. Chatterjee, learned advocate appearing for the writ petitioners submits that the learned Tribunal erred in law in passing the impugned order without considering the fact that as the applicant was absent from his service without any intimation and as he did not pay the outstanding dues to the tune of Rs.5,26,708/-, a major penalty chargesheet was issued *vide* memo dated

3rd July, 2002 and the same was duly served upon him and a copy of the same was also pasted at his residence. Without responding to the same, he tendered his resignation on 31st July, 2002. In view thereof, the impugned memo dated 1st July, 2005 was issued intimating, *inter alia*, that '*in terms of Para 41(i) of Railway Services (Pension) Rule-1993 resignation by a Railway servant from a service or a post shall lead to forfeiture of his past service*'.

He argues that the disciplinary authority recommended for imposing major penalty of '*removal from service*' and forwarded such recommendation to the Railway Board for issuance of the final order *vide* memo dated 8th December, 2010 and in the midst thereof, to stall the proceedings, the applicant approached the learned Tribunal.

According to him, though the judgment delivered in the case of '*Union of India & Ors. Vs. Dinanath Shantaram Karekar & Ors.*' reported in (1998) 7 SCC 569 is distinguishable on facts, the learned Tribunal erred in law in applying the proposition of law laid down in the said judgment to the facts of the present case without appreciating the well settled principle that a slight difference fact or an additional fact may make a lot of difference in the decision making process.

Mr. Das, learned advocate appearing for the applicant/respondent herein denies and disputes the

contentions of Mr. Chatterjee and drawing our attention to the documents annexed at pages 92 to 96 of the petition, he submits that the outstanding dues of Rs.6,93,056/- was duly paid by the respondent to the authorities on 14th November, 2003. Subsequent thereto, the respondent was intimated *vide* memo dated 4th October, 2005 that a further amount is due and payable and the procedure for acceptance of resignation would be arranged after deposit of the outstanding amount. Pursuant thereto, the outstanding dues were also paid by the respondent and accepted by the authorities with an intimation that *'process of resignation as tendered now may be initiated if the competent authority deemed fit'*, as would be explicit from the memo 28th February, 2012 annexed to the affidavit-in-opposition to the writ petition.

According to Mr. Das, the memo dated 7th January, 2005 as regards forfeiture of past service could not have been issued since resignation was admittedly not accepted till 28th February, 2012 and as such, he was in service on the said date, i.e., 28th February, 2012 and continued in service till the date of his superannuation on 31st October, 2021. There was no material on record to establish that the chargesheet or the notice of proceedings was duly served upon the respondent, in accordance with law.

The proposition of law that can be culled out from the judgment delivered in the case of *'Union of India & Ors.'*

(*supra*) is that a document sent by a registered post can be treated to have been served only when it is established that it was tendered to the addressee. A single effort cannot be treated as sufficient and the position regarding service of the chargesheet is different from position regarding communication of termination order. In case of disciplinary proceedings, actual service of notice upon the delinquent is essential.

It is the impact of the action that would define the nature of the procedure that is to be adopted. If there is a civil consequence of an order, particularly one that visits the incumbent with harsh consequences, proof of actual service of the notice of proceedings becomes indispensable.

The said issue as regards service of notice of proceedings and the chargesheet was duly considered by the learned Tribunal and a factual finding was recorded to the effect that '*however, the notice of proceedings does not seem to have been served upon the applicant as no scrap of paper has been marked or referred to, substantiating such service*'. We do not find any reason to disbelieve such finding. The proposition of law laid down in the case of '*Union of India & Ors.*' (*supra*) has been rightly applied to the facts of this case.

By the order impugned, the learned Tribunal directed the petitioners to consider and pass a reasoned order indicating specifically whether the resignation tendered

by the respondent herein on 31st July, 2002 was ever accepted. It was also observed that if such resignation had been accepted, the case of the respondent shall be considered, in accordance with law and in case, his resignation had not been accepted, he should be deemed to be in service till date since the departmental proceedings on an unserved chargesheet was not sustainable. The learned Tribunal also recorded that the respondent shall not be entitled to salary for the period during which he had not served.

We do not find any infirmity or error in such directions. The impugned order also does not suffer from any jurisdictional error or any substantial failure of justice warranting interference of this Court.

Accordingly, the writ petition being **WP.CT 141 of 2015** is dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)