

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 463 of 2013

Kalicharan Mahato
versus
Union of India & Ors.

For the Petitioner : *Mr. Achin Majumder,*
Ms. Ananya Adhikary.

For the Respondents : *Mr. Pulakesh Bajpayee.*

Hearing is concluded on : *10th August, 2023.*

Judgment On : **17th August, 2023.**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging an order dated 11th June, 2013, passed by the learned Tribunal in the original application being OA No.179 of 2011.

2. While the applicant/writ petitioner herein was working in the post of Reservation Supervisor under the railways and about 29 days prior to his superannuation on 30th June, 2007, he was issued a charge sheet dated 1st

June, 2007. He replied to the same and also sought for the relevant documents for his defence. The respondent no.2 thereafter issued an order on 13th December, 2007 intimating the name of the enquiry officer (in short, EO) and the dates scheduled for regular enquiry. In the midst thereof, the petitioner was allowed to retire on 30th June, 2007. The respondents, however, proceeded with the disciplinary proceeding. After the enquiry report dated 22nd February, 2008 was filed, the disciplinary authority (in short, DA) referred the matter to the Union Public Service Commission (in short, UPSC) for its recommendation. By a memo dated 8th September, 2010, UPSC opined that the ends of justice would be met if '*penalty withholding 25% of the monthly pension on permanent basis*' is imposed upon the petitioner. Agreeing with the recommendation of UPSC, the Hon'ble President decided that '*penalty withholding 25% of the monthly pension on permanent basis*' be imposed. The said decision was intimated by the Director, Establishment (D & A) Railway Board *vide* memo dated 13th October, 2010. Challenging the entire proceedings including the recommendation of UPSC and the order of punishment dated 13th October, 2010, the petitioner filed the original application which upon contested hearing was dismissed by the order impugned.

3. Mr. Majumder, learned advocate appearing for the petitioner has advanced the following arguments:

a) Without considering the petitioner's written statement of defence and without forming any opinion as to whether the enquiry should be proceeded with under the Railway Servant (Discipline and Pension) Rules,

1968 (hereinafter referred to as the 1968 Rules), the DA appointed the EO and such act is violative of the provisions of Rule 9(9)(a)(i) of the 1968 Rules;

b) In spite of repeated representations the EO did not supply copies of the documents as sought for by the petitioner for his defence;

c) After cessation of the employer-employee relationship on 30th June, 2007, the respondents could not have proceeded with the disciplinary proceeding initiated under the 1968 Rules;

d) In the absence of any finding in the proceedings that the petitioner had caused pecuniary loss or grave misconduct and having allowed the petitioner to superannuate unconditionally, the authorities did not have the requisite power to continue with disciplinary proceeding against the petitioner on the basis of the provisions of Rule 9 of the Railway Servant (Pension) Rules, 1993 (hereinafter referred to as the 1993 Rules);

e) The right to receive pension is recognised as a right to property and such right could not have been curtailed applying the provisions of rule 9 of the 1993 Rules;

f) The EO had acted as the prosecutor in the proceeding and had cross-examined the witnesses and such act is violative of the principles of natural justice. The enquiry report would also reveal that the EO had proceeded beyond the charges framed and had penalised the petitioner merely on the basis of surmises and conjectures;

g) The learned Tribunal glossed over the arguments as advanced and did not return any finding on the same and such infirmity on the face of the records warrants interference in the present writ petition.

In support of the above arguments reliance has been placed upon the judgments delivered in the cases of *State of Jharkhand & Ors. –vs- Jitendra Kumar Srivastava & Anr.*, reported in *AIR 2013 SC 3383*, *Shri D. V. Kapoor –vs- Union of India & Ors.*, reported in *1990(3) SLR 5*, *Kamal Kumar Majumdar –vs- Union of India & Ors.*, reported in *2008(1) CHN 951* and the unreported judgments delivered in the cases of *Sri Swapan Kumar Dasgupta –vs- Union of India & Ors.* and *Sri Jnanadhir Mohan Sen Sharma –vs- Union of India & Ors.*

4. *Per contra*, Mr. Bajpayee, learned advocate appearing for the respondents submits that the learned Tribunal upon dealing with all the factual issues arrived at specific findings and the same does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

5. According to Mr. Bajpayee it is explicit from the provisions of Rule 9(2)(a) of the 1993 Rules that there is no bar in continuation of the disciplinary proceeding after retirement of the employee and the said Rules empower the competent authority to continue and conclude such disciplinary proceeding as if the railway servant has continued in service. The 1993 Rules do not disclose any provision of law towards initiation of

disciplinary proceeding and such proceeding can only be invoked under the 1968 Rules.

6. Mr. Bajpayee further argues that pecuniary loss is not the sole essential element for continuation of proceeding after retirement and the petitioner has been rightly penalised since in the proceedings the petitioner was found guilty of grave misconduct.

7. The learned Tribunal by the impugned judgment had dismissed the petitioner's application primarily on the ground that the scope of judicial review in disciplinary matters is very limited moreso when the petitioner had not alleged violation of any statutory rules or the principles of natural justice. The petitioner's argument that he was not supplied the relevant documents for his defence had not been accepted since according to the learned Tribunal the petitioner did not file any written representation against the *'findings of the EO to show that he had taken up such issue with the DA'*. The argument that the EO acted as the prosecutor was also negated observing *inter alia* that *'there are also rulings of the courts wherein it has been held that the enquiry officer may question the witnesses to get clarifications on various points'*.

8. The learned Tribunal did not return any finding on the issue as regards violation of the provisions of Rule 9(9)(a)(i) of the 1968 Rules and the issue as to whether the charges could have led to any finding that the petitioner had caused monetary loss or his acts constituted grave

misconduct save and except an observation to the effect '*the charges are seen to be specific and the findings on the same are also detailed*'.

9. It is now a well settled principle of law that in a case where a disciplinary proceeding is pending when the employee attained the age of superannuation, the same will automatically come to an end. It is trite that a disciplinary proceeding cannot be allowed to continue after the employee retires. However, in the event of pecuniary loss and/or grave misconduct, the authorities have the requisite power to continue with the proceeding in terms of Rule 9 of the 1963 Rules.

10. Rule 9 of the 1993 Rules has no application in the instant case since the disciplinary proceeding was not in terms of the said Rules but in terms of 1968 Rules. The respondents could have taken a decision not to permit the petitioner to retire from service but no such decision was taken. In such a situation, the disciplinary proceeding dies a natural death and the respondents loose the authority to continue it against the superannuated petitioner.

11. The charges alleged against the petitioner were *inter alia* that he did not follow the extant procedure towards allotment of berth from the reservation quota and had encouraged unauthorised reservation touts and had lodged malicious complaint against other Railway employees. In the proceedings no pecuniary loss was quantified or established to have been caused to the Railways by any act of misconduct of the petitioner. The entire gamut of charges did not lead to any finding that the petitioner was guilty of

any act of illegal gratification, corruption or misappropriation. The charges cannot, by the furthest of imagination, be construed to be grave misconduct.

12. Upon weighing the gravity of the offence alleged against the petitioner, having regard to the object and spirit of the 1993 Rules and bearing in mind that pension is a right to property of an employee, who has rendered continues, irreproachable service for his employer, the learned Tribunal ought to have discounted the argument of the authorities that the petitioner was guilty of pecuniary loss and grave misconduct.

13. For the reasons discussed above, the order impugned dated 11th June, 2013 passed in the original application being OA No.179 of 2011 is not sustainable in law and the same is, accordingly, set aside. The disciplinary proceeding against petitioner on the basis of the charges contained in the memo dated 1st June, 2007 including the order of punishment dated 13th October, 2010 are quashed.

14. Mr. Bajpayee, upon instruction, submits that after superannuation the petitioner has been disbursed all the benefits save and except 25% of the monthly pension on permanent basis as directed by the order dated 13th October, 2010.

15. In view thereof, this Court directs the respondents to disburse the withheld benefits in favour of the petitioner within a period of two weeks from the date of communication of this order and to start payment of the petitioner's full monthly pension on regular basis thereafter.

16. With the above observations and directions, the writ petition being WPCT 463 of 2013 is disposed of.

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

18. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)