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WPO/1788/2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SNEHASISH KAR
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 19th December, 2023.

Appearance:
Mr. Tanmoy Mukherjee, Adv.
Mr. Saptarshi Kr. Mal, Adv.
Mr. Amal Kr. Saha, Adv.
Mr. Iresh Paul, Adv.
Mr. Soumava Santra, Adv.
...for the petitioner

The Court: Despite service, none appears for the respondent. Affidavit of service filed today be kept on record.

The supplementary affidavit and receipt of service of supplementary affidavit filed today be kept on record.

The petitioner is the obvious victim of a grudge.

A proceeding under the Prevention of Money Laundering Act (PMLA) was initiated against the petitioner while the petitioner was in service as a Senior Health Administrative Assistant under the Ministry of Health and Family Welfare, Government of India. Ultimately the provisional order of attachment which had been passed against the petitioner under the PMLA was set aside by this Court vide order dated June 26, 2023.

In fact, the Central Bureau of Investigation (CBI) which was the investigating authority filed a report on December 29, 2022 observing that the charges against the petitioner could not be established, for which no charge-sheet could be filed against the petitioner. Such report was accepted on January 25, 2023 and the proceeding against the petitioner was, thus, dropped.

On a different front, the employer of the petitioner had initiated departmental proceedings against the petitioner. Initially, the petitioner was suspended and subsequently removed from service. The matter ultimately went up to the Central Administrative Tribunal. By an order dated September 12, 2023, the Tribunal quashed the termination of the petitioner. Thus, the petitioner was re-instated in service with full honours.

Surprisingly, in its affidavit filed in connection with the proceedings before the Central Administrative Tribunal, the employer of the petitioner disclosed a purported communication dated January 6, 2023 issued by the Central Bureau of Investigation wherein it was mentioned that during investigation of the case, sufficient oral and documentary evidence had come on record against the petitioner who was then posted as Senior Health Administrative Assistant under the CGHS, Siliguri unit for initiating RDA (Regular Departmental Action) Major against the petitioner.

Although no action was then taken by the employer, a subsequent proceeding has been initiated against the petitioner, as evident from the annexures to the supplementary affidavit. It transpires from the memorandum annexed at page 8 of the supplementary affidavit, dated November 28, 2023, that a fresh action has been initiated against the petitioner solely on the basis of the

document dated January 6, 2023. Learned counsel for the petitioner argues that the said proceeding is palpably bad in law.

Due to non-appearance of the respondent despite service, the benefit of their versions is not available to the Court. However, what is available is the materials annexed to the writ petition and the supplementary affidavit which stand uncontroverted in view of lack of any opposition.

It transpires from the materials on record that the date of issuance of the purported communication by the CBI to the employer of the petitioner was January 6, 2023.

However, even prior to the same on December 29, 2022, the CBI itself had filed a report in connection with the criminal proceedings initiated against the petitioner indicating that the charges against the petitioner had not been established for which the charges were being dropped. Subsequent to the impugned communication dated January 6, 2023, on January 25, 2023, the report of the CBI was accepted and the proceeding against the petitioner was dropped.

Thus, since the proceeding undertaken by the investigating agency itself culminated in being dropped in the absence of any charges being established against the petitioner (which knowledge was available to the CBI itself in view of its prior submission of a report on December 29, 2022 which was accepted later on January 25, 2023), it was utterly beyond the authority of the CBI to write the incriminating communication against the petitioner to his employer. That apart, it was *de hors* the authority of the CBI to recommend initiation of RDA Major against the petitioner to the petitioner's employer.

Another facet of the matter is that the said document dated January 6, 2023 was disclosed by the employer of the petitioner in the proceedings before the Central Administrative Tribunal in its opposition. Despite such disclosure, the Central Administrative Tribunal had on merits set aside the removal of the petitioner. The employer of the petitioner had not initiated any proceeding till that date against the petitioner on the basis of the January 6, 2023 communication. Thus, the employer of the petitioner is debarred by the principle of issue estoppel from initiation of a subsequent disciplinary proceedings against the petitioner on the basis of the said purported communication dated January 6, 2023, having not taken the issue before the Central Administrative Tribunal which turned down the attempt to remove the petitioner despite having full knowledge of the said document.

In such view of the matter, the impugned action of the respondent no.4 against the petitioner was palpably mala fide and illegal. The mala fides becomes all the more evident since the impugned memorandum annexed to the supplementary affidavit was issued on the very date when the petitioner was superannuated and was handed over to the petitioner soon thereafter.

Thus, such arbitrary, mala fide and patently illegal action of the respondent no.4 cannot be sustained in the eye of law.

Accordingly, WPO/1788/2023 is allowed, thereby setting aside the impugned communication of the Central Bureau of Investigation dated January 6, 2023 annexed at page 29 of the writ petition as well as the memorandum dated November 28, 2023 annexed at page 8 of the supplementary affidavit of the petitioner. Any action, if taken in terms thereof, is also consequentially set aside and revoked.

The respondent no.4 shall pay damages/costs to the tune of Rs.50,000/- to the petitioner within a month from the date of communication of this order to the said respondent by acting on the server copy of this order to compensate the immense and unwarranted harassment caused to the petitioner at the fag end of his career by the recalcitrant action of the respondent no.4.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)