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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.1508, 1512 & 1515 of 2022

The Executive Director,
Bharat Heavy Electricals Limited (BHEL),
Tiruchirapalli ... Appellant in all appeals

-VS-

1.The Central Government Industrial Tribunal-
cum-Labour Court,
Shastri Bhavan,
Chennai-600 006.

2.K.Balu ... Respondents in W.A.Nos.1508 & 1512/2022

1.The Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court, I Floor, "B" Wing, 26,
Haddows Road,
Shastri Bhavan,
Chennai-600 006.

2.K.Balu



3.Bharat Heavy Electricals Limited,
Ranipet – 632 406,
represented by its
Executive Director.

... Respondents in W.A.No.1515/2022

W.A.No.1508 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 29.04.2022, passed in W.P.No.913 of 2015, on the file of this Court.

W.A.No.1512 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 29.04.2022, passed in W.P.No.914 of 2015, on the file of this Court.

W.A.No.1515 of 2022 is filed under Clause 15 of the Letters Patent against the order, dated 29.04.2022, passed in W.P.No.666 of 2015, on the file of this Court.

For Appellant in all Appeals : Mr.A.V.Arun

For Respondent 1 in all Appeals : Mr.K.S.Jeyaganeshan

For Respondent 2 in all Appeals : Ms.Y.Kavitha
for Mr.S.Arivazhagan

JUDGMENT

(By *S.Vaidyanathan,J.*)

All these appeals have been preferred by the appellant Management against the order of the learned single Judge, affirming the award of the Central Government Industrial Tribunal, in short, "the Tribunal", directing the appellant Management to reinstate the respondent employee in service at Ranipet Unit with all consequential



benefits. One of the appeals pertains to the question of transfer of the respondent employee from Ranipet Unit to Tiruchirapalli Unit, which issue need not be gone into in the present appeals, as the employee has attained the age of superannuation and the monetary benefits that may be extended to the employee will depend upon the outcome of the industrial dispute in I.D.No.62 of 2013, which is going to be adjudicated on merit by the Tribunal for the reasons mentioned below.

2. The respondent employee joined the services of appellant BHEL on 10.06.1983 and was proceeded against under BHEL Conduct, Discipline and Appeal Rules,1975, for his misconduct later on. He having joined the service as a Design Assistant Grade-III in the year 1983, rose to the level of Senior Additional Engineer, Grade-II and, by an order, dated 16.02.2008, was transferred from Ranipet Unit to Tiruchirapalli Unit. He attained the age of superannuation in the month of November,2022.

3. For the misconduct alleged against the respondent employee, a departmental inquiry was conducted and he was removed from service on 22.05.2012. This issue was taken up by the Tribunal in the aforesaid I.D., after failure of conciliation and on being a reference made by the Central Government. During the pendency of the I.D., the employee took a plea about the fairness of the inquiry and stated that he was not governed by BHEL CDA Rules,1975, but was only governed by the Standing Orders of BHEL, Ranipet. The Management, in the counter, has stated that they are not



specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges."

7. In the present case, in Paragraph 17 of the Counter Statement before the Tribunal, the employer has taken a plea to lead the evidence against the charges and the relevant paragraph is extracted below :

"17. The enquiries held against the Petitioner were all conducted conforming to the principles of natural justice and providing adequate opportunity to the petitioner to vindicate his stand It is not violated. Without prejudice to the said stand, the Respondent reserves its right to lead evidence before this Tribunal in proof of the charges in case necessity arises for the same." (emphasis supplied).

8. The Apex Court, in *D.P.Maheshwari v. Delhi Administration and Ors.*, 1983 (4) SCC 293, held that neither the High Court or the Supreme Court can decide any preliminary issue except with regard to the fairness of the inquiry or the fairness of the settlement under Section 18 (1) of the Act. Therefore, in the light of the said decision of the Supreme Court in *D.P.Maheshwari's* case, in addition to the preliminary issue, all other issues have got to be decided together and a composite award has to be



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charges are not proved or taking into account the proportionality of the punishment.

10. Writ Appeals are allowed accordingly. No costs. Consequently, the connected C.M.P.Nos.9869,9882 and 9919 are closed.

11. The Tribunal is expected to proceed with the matter on day-to-day basis, as the respondent employee has attained the age of superannuation and that he has been dismissed from service a decade ago, and following the time-line prescribed under Rule 10-B(8) of the Industrial Disputes (Central) Rules,1957.

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking Order
dixit

(S.V.N.,J.)

(K.R.S.,J.)

09-06-2023

To

1.The Presiding Officer,
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