

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK

Writ Petition No.24732 of 2004

ORDER : *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

This Writ Petition is filed by the petitioners under Article-226 of the Constitution of India seeking a '*Writ of Certiorari*' by calling for records relating to the order passed by the Central Administrative Tribunal (for short, 'the Tribunal'), Hyderabad in O.A.No.586 of 2003, dated 29.07.2004 and to quash the same.

2. Heard Mrs. Kavitha Yadav learned counsel for petitioners and Mr. P.Prabhakar Reddy counsel for respondent.

3. Learned counsel for the petitioners contended that the respondent was working as 'Mailman' and while he was discharging his duties, he has destroyed two articles while sorting the parcels, dated 11.05.1997 and the same was considered as misconduct by the petitioners and disciplinary proceedings were initiated and after conducting

detailed enquiry, major penalty of removal from service was imposed on the respondent vide orders, dated 31.10.2000. Aggrieved by the said orders of removal, the respondent has preferred an appeal and the appellate authority was pleased to modify the orders of removal to that of compulsory retirement vide orders, dated 2/3.12.2002 and the petitioners had contended that the respondent has challenged the orders of removal as well as modified punishment of compulsory retirement before the Tribunal by filing O.A.No.586 of 2003 and the Tribunal vide orders dated 29.07.2004 was pleased to allow the O.A preferred by the respondent without appreciating any of the contentions raised by the petitioners.

4. Learned counsel for the petitioners had further contended that the Tribunal failed to appreciate the orders of removal which were modified to that of compulsory retirement and once the orders of removal are ordered, the Tribunal ought not to have set aside the orders of removal and also the lenient view taken by the appellate authority i.e., modifying the

punishment of removal to that of compulsory retirement on the ground of proportionality. Therefore, appropriate orders be passed in the writ petition by setting aside the orders passed by the Tribunal in O.A.No.586 of 2003, dated 29.07.2004 and allow the writ petition.

5. Learned counsel for the respondent had contended that the Tribunal has examined the case in detail and came to a conclusion that there are no direct witnesses stating that the respondent has destroyed the 2 parcels and on that ground, the Tribunal was justified in allowing the O.A in favour of the respondent. Learned counsel for the respondent further submitted that for the very same set of allegations, the respondent was also tried in a criminal case in C.C.No.4346 of 2005 and he was acquitted by the said charge vide punishment, dated 27.02.2008 by the Competent Criminal Court. Therefore, the Tribunal was justified in allowing the O.A. There are no merits in the writ petition and the same is liable to be dismissed.

6. This Court, having considered the rival submissions made by the parties, is of the considered view that the Tribunal ought not to have set aside the orders of removal as well as compulsory retirement. The Tribunal could not have appreciated the evidence on record and that the appellate authority has already taken a lenient view and modified the punishment to that of compulsory retirement. Therefore, the Tribunal ought not to have interfered with the orders passed by the appellate authority.

7. Therefore, the writ petition is allowed and the orders passed by the Tribunal in O.A.No.586 , dated 29.07.2004 are liable to be set aside and accordingly they are set aside. It is made clear that the respondent would be entitled for the service benefits consequent upon the punishment of compulsory retirement as modified by the appellate authority.

8. With these observations, the Writ Petition is allowed. No costs.

9. As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK , J

Date: 23.01.2023
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