

07.02.2024
Item No.01
Court No.11
Avijit Mitra

WP.CT 9 of 2024

In re: An application under Article 226 of the Constitution
of India;

And

Union of India & ors.
-Versus -
Chandi Charan Dolai

Mr. Sahasrangshu Bhattacharjee,
Ms. Amrita Pandey
...for the petitioners

Mr. Ujjal Ray,
Mr. Arpa Chakraborty
...for the respondent

Affidavit-of-service filed by the petitioners be kept on
record.

The Union of India and its functionaries are aggrieved
by an order dated 10th May, 2023 passed by the learned
Tribunal in an original application being OA
No.350/01191/2022.

Records reveal that disciplinary proceedings were
initiated against the respondent herein and one Shri Madan
Mohan Guin (in short, Madan) under the provisions of
Central Civil Services (Classification, Control and Appeal)
Rules, 1965 (hereinafter referred to as the 1965 Rules).
During pendency of the disciplinary proceedings, Madan

retired on 31st July, 2011 and thereafter the proceeding pending against him was converted under Rule 9 of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 1972 Rules) and an order of punishment of withholding of 25% of monthly pension for a period of five years and a withholding of 25% of his admissible gratuity was imposed upon him. The respondent earlier approached the learned Tribunal challenging the chargesheet dated 23rd March, 2011 but during pendency of the same, an order of punishment of removal of service was imposed upon him. Aggrieved thereby, he preferred a fresh original application being O.A. 1713 of 2018 challenging *inter alia* the said order of punishment. The said original application was disposed of by an order dated 14th March, 2022. The said order was not challenged by the authorities but pursuant thereto, an order dated 21st June, 2022 was passed without interfering with the order of punishment. Assailing the said order dated 21st June, 2022, the respondent preferred an original application being O.A. No.350/01191/2022 which was disposed of by the order impugned in the present writ petition. By the said order the learned Tribunal quashed the order dated 21st June, 2022 and directed the disciplinary authority to reconsider the quantum of penalty awarded by the respondent which shall invariably be lesser than penalty of removal/dismissal from service, keeping in view the penalty awarded to Madan.

Mr. Bhattacharjee, learned advocate appearing for the petitioners submits that without considering the gravity of the offence and the direct involvement of the respondent in the same, the impugned order was passed quashing the order dated 21st June, 2022. The learned Tribunal failed to appreciate that the mechanism towards disposal of the proceedings against the respondent and Madan were different as both followed different tracts with respective guidelines.

He further argues that in the earlier order of the learned Tribunal no definite finding was returned that the punishment imposed upon the respondent was excessive. In fact, the learned Tribunal observed that such imposition '*appears to be excessive*'. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned. Such infirmity warrants interference in the present writ petition.

Per contra, Mr. Ray, learned advocate appearing for the respondent submits that admittedly Madan was the principal accused. However, the punishments imposed upon Madan and the respondent were different. Two different yardsticks were erroneously applied as regards quantum of punishment. Upon appreciation of such infirmity, the learned Tribunal remanded the matter afresh to the petitioners for a decision afresh but repeating the same grounds, the order dated 21st June, 2022 was passed and as

such, the learned Tribunal rightly quashed the said order dated 21st June, 2022.

We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

Indisputably, the earlier order passed in O.A. No.350/1713/2018 by which the matter was relegated to the authority for reconsideration as regards quantum of punishment was not challenged by the petitioners. In course of hearing of the said original application it was argued on behalf of the petitioners that the imposition of punishment upon the respondent and Madan cannot be equated since the same were issued under different Rules. However, negating such contention, the matter was remanded for reconsideration observing *inter alia* that ‘*in a situation when the authorities against two offenders charged with alleged violation of procedures, unless there are extenuating circumstances, the incidence of penalty on grounds of fairplay and justice cannot differ as extensively as between “removal” and “a cut in pension and gratuity”*’. The said order was not challenged by the petitioners and the same attained finality amongst the parties.

The argument of Mr. Bhattacharjee that the imposition of punishment upon the respondent and Madan cannot be equated since the same were issued under different Rules, was rightly discounted by the learned Tribunal observing *inter alia* that ‘*this Tribunal, in its wisdom, remanded the*

matter back to the respondents to decide the matter afresh on the quantum of punishment so that challenge to discrimination is put to the rest and yet the respondents again discriminated the same by upholding the penalty as awarded to the applicant earlier vide order dated 04.09.2017', in the backdrop of the admitted fact that Madan was the principal offender and the respondent was found to be negligent in his duties.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

In view thereof, no interference is called for in the present writ petition and the same is, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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