

07.05.2024
Item No.04
Court No.11
Avijit Mitra

WPCT 32 of 2024
with
IA No. CAN 1 of 2024

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

And

Union of India & ors.
- Versus -
Nirmal Kumar Saha

Mr. D.N. Ray,
Ms. Sarda Sha
... for the petitioners
Mr. Ujjal Ray,
Mr. Arpa Chakraborty
...for the respondents

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 17th March, 2023 passed in an original application being O.A. 350/371/2020.

Records reveal that the original application was preferred by the original applicant/respondent herein challenging *inter alia* the chargesheet dated 4th November, 2006, the enquiry report dated 23rd November, 2006, the order of punishment dated 30th August, 2009 and the order passed by the Appellate Authority dated 27th January, 2020. The learned Tribunal by an order dated 24th March, 2022, quashed the order of the Appellate Authority and directed the said authority to consider the case

afresh. Aggrieved thereby, the respondent herein, preferred a writ petition being WPCT No. 86 of 2022 which was disposed of on 23rd November 2022, setting aside the order dated 24th March, 2022 and remanding the matter to the learned Tribunal to dispose of the proceeding. The learned Tribunal thereafter decided the matter afresh and passed the order impugned in the present writ petition setting aside chargesheet dated 4th November, 2006, the order of the disciplinary authority dated 30th August, 2009 and the order passed by the Appellate Authority.

Mr. Ray, learned advocate appearing for the petitioners submits that the learned Tribunal passed the order impugned placing reliance upon a circular being DG P&T dated 1st October, 1918 which was not even a part of the proceedings.

He argues that the impugned order was passed failing to appreciate the difference between '*current duty*' and '*Duty*' arising out of '*ad hoc appointment/promotion*'.

Drawing our attention to Rule 12 of the CCS (CCA) Rules, 1965, Mr. Ray submits that where a Government servant belonging to a service or holding a Central Civil post of any Group, is promoted, whether on probation or temporarily to the service or Central Civil post of the next higher Group, he shall

be deemed for the purposes of Rule 12 to belong to the service of, or hold the Central Civil post, of such higher Group. In view thereof, the said officer was competent to pass the final order of punishment dated 28/30th August, 2019. Such arguments, as advanced, were glossed over by the learned Tribunal and no specific finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Ray further argues that the impugned order was passed misconstruing the earlier order passed by this Court in the writ petition inasmuch as in the said order, this Court did not arrive at any finding as regards competence of the officer, who passed the order of punishment.

Per contra, Mr. Ujjal Ray, learned advocate appearing for the original applicant/respondent submits that the final penalty order was passed by the *ad hoc* Senior Superintendent-in-Charge, RMS, W.B. Division, an approved Group-B officer. The said *ad hoc* Senior Superintendent-in-Charge had no jurisdiction whatsoever to act as the disciplinary authority of the respondent. Neither the disciplinary authority nor did the Appellate Authority consider such preliminary objection.

He further argues that the second charge was levelled alleging violation of one clause 24(7) GID below Rule 3 of the CCS (Conduct) Rules, 1964. The

said clause could not be placed on record by the petitioners. In the said conspectus, the learned Tribunal rightly set aside the impugned chargesheet dated 4th November, 2016 together with the orders passed by the disciplinary authority and the Appellate Authority.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

In exercise of judicial review, the Court interferes not when the order challenged is not right but only when it is clearly wrong. The petitioners herein had miserably failed to establish that the authority imposing punishment upon the petitioners was the competent authority under the relevant rules. The officer who issued the order of punishment was an *ad hoc* Senior Superintendent-in-Charge, as would be explicit from the documents annexed at pages 140 and 142 of the writ petition. The memo dated 7th March, 2018 further details that the said officer was promoted to GTS Group II purely on temporary and officiating basis for a maximum period of 11 months. The said period of 11 months admittedly expired prior to issuance of the order of punishment dated 28/30th August, 2019. In view thereof, the learned Tribunal arrived at a categorical finding that the officer, who issued the order of

punishment was not competent to issue the same. As a jurisdictional error crept in, the learned Tribunal rightly interfered setting aside the order of punishment as well as the order passed by the Appellate Authority.

The learned Tribunal upon dealing with the factual issues arrived at a specific findings and we do not find any error in the same.

Accordingly, no interference is called for in the present writ petition and the same is dismissed and the connected application being IA No. CAN 1 of 2024 is also disposed of.

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.)