

12.11.2024
(D/L-6)
Ct. No.4
(B.K.N.)

W.P.C.T. 94 of 2024

**Manoranjan Nikap
Vs.
Union of India & Ors.**

Mr. Bikash Ranjan Bhattacharya,
Mr. S. K. Datta,
Mr. Barun Chatterjee
...for the Petitioner

Mr. Joydeep Sen,
Mr. Asit Kr. De,
...for the Respondent

1. The writ petitioner was working as a Loco Pilot in the Kharagpur Division of South Eastern Railway. On 3rd November, 2018 he was served with an office order stating that some incumbents had held an unlawful demonstration in front of the Combined Crew Lobby in front of the Kharagpur Railway Station.
2. There was an allegation that government officials had been manhandling and that the demonstrators prevented other government officials from performing their official duty and also misbehaved with the railway administrative officers.
3. Assigning such reasons the petitioner was removed by the order dated 3rd November, 2018. The appeal against the said order was dismissed on 12th April, 2019. A revision against the said

order was also preferred and since no order was being passed on the revision the petitioner preferred O.A. 607 of 2019 before the Central Administrative Tribunal. The same was disposed of on 15th January, 2020 directing the Revisional Authority to pass an appropriate reasoned and speaking order within three months from the date of receipt of copy of the order.

4. It was clearly stated in the order passed by the Central Administrative Tribunal that the right of the applicant for reinstatement and consequential benefits shall be governed by the order passed by the Revisional Authority. The Revisional Authority passed the order on 11th August, 2020. A unique order has been passed by the Revisional Authority directing a thorough departmental enquiry at the level of the Appellate Authority. which has been quoted by the Central Administrative Tribunal in the order dated 12th April, 2021 passed in the second O.A. No. 831 of 2020, which reads as follows:

“Considering the entire case, in the light of Hon’ble CAT/CAL’s Orders vis-a-vis the revision petition dated 05.02.2020 submitted by the said Shri Nikap, the undersigned decides for a through departmental inquiry at the level of Appellate Authority. The Order dated 12.04.2019 passed by the Appellate Authority is set aside and the Appellate Authority (AA) is directed to dispose of the appeal preferred by the said Shri Nikap, afresh holding inquiry following the proper procedure of The Railway Servants (Discipline & Appeal) Rules, 1968 as amended from time to time.”

5. The Revisional Authority's order was the subject matter of the proceedings before the Tribunal in O.A. 831 of 2020. The Tribunal has set aside the order passed by the Revisional Authority giving liberty to act strictly in accordance with law. The order passed by the Tribunal was assailed by the Union of India in a writ proceedings in W.P.C.T. 48 of 2021. The order of Writ Court reads as follows:

"The respondent authorities were, however, given opportunity to act strictly in accordance with law. We expected the petitioners to have gracefully accepted the said order for the various holes in the measures adopted by them to remove the respondent. Mr. Rabindranath Bag, learned Counsel appearing for the petitioners has submitted that the enquiry proceedings may proceed after keeping the respondent under suspension and he may be deemed to have been reinstated for the purpose of holding enquiry, however, we are not making any observation on this. But it is needless to mention that the order of removal has been set aside. He needs to be reinstated in his service but whether he should be allowed to discharge his function regularly or to be kept under suspension is for the authority to decide.

With the aforesaid observation, the writ petition being WPCT 48 of 2021 stands disposed of.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court."

6. Thereafter the respondent authorities have reinstated the petitioner. While doing so, in the order of reinstatement dated 8th November, 2021 they have suspended the employee. Relevant extract of which reads as follows:

"The Railway Servant shall be deemed to have been placed under suspension by the undersigned from the date of the original order of removal from service and

shall continue to remain under suspension until further orders. The Railway Administration reserves the right to take fresh action in terms of Rule – 9 of R.S (D&A) Rules, 1968 by issuing fresh major penalty charge sheet as deem fit and proper considering the circumstances of the case without prejudice.”

7. Pursuant thereto a fresh enquiry was initiated by an order dated 8th November, 2021 by a fresh charge memo dated 11th January, 2022. The charges reads as follows:

“It was reported that on 03.11.2018, from around 10:30 hrs in the morning to till 20:30 hrs, group of Running Staff started unlawful demonstration, in front of Combined Crew Lobby Kharagpur on the issue of suicide of late Shri Guddu Kumar Keshari, ex ALP/KGP and Railway Administration was trying to arrange all kinds of due benefits to the eligible family members of deceased staff. However, it was also reported that suddenly Running Staff had started agitation in front of Combined Crew Lobby near Railway station, KGP.

Sri Manoranjan Nikap, while working as Loco Pilot (Passenger)/KGP, (as identified by Sri Laxmikanta Behera, Crew Controller) is one of employees who has committed an act of misconduct wherein he started vandalism with others inside the crew lobby and then instigated the mob to make situation worse for the railway official present there. Sri Manoranjan Nikap manhandled Government Officials, forcibly prevented other Govt. Officials from performing official duty, misbehaved with higher Railway Administrative officers. Sri Manoranjan Nikap also indulged in violence and vandalism in the Combined Crew Lobby and instigated other running staff to gherao combined crew lobby and disturbed peace. This led to stoppage of movement of trains almost for continuous 08 hrs incurring significant loss of revenue as well as disrupted traffic eventually causing great inconvenience to the public.

By the above cited act Shri MANORANJAN NIKAP Loco Pilot (Pass)/KGP has acted in a manner which is unbecoming of a Railway servant contravening Rule No. 3.1, (iii), (xxi) and Rule No. 07 of R.S. (Conduct) Rules 1966 thereby rendering himself liable for disciplinary action being taken against him in terms of Railway Servant D & A Rules 1968 as amended from time to time.”

8. Pursuant to the enquiry conducted in respect of the said charge he has been removed from the

railway service with immediate effect without any compassionate allowance, by an order passed by the Senior Divisional Electrical Engineer (Corporation), South Eastern Railway, Kharagpur dated 26th April, 2023.

9. The appeal against the same was preferred before the Appellate Authority i.e. the Additional Divisional Railway Manager, Kharagpur who upheld the punishment order reserving the petitioner's liberty to avail the remedy of revision. The petitioner had approached the Central Administrative Tribunal by filing the third O.A. 350/1099/2023 which has been partly allowed on 28th February, 2024, which is the subject matter of the present proceedings.
10. Learned senior counsel appearing on behalf of the petitioner has drawn attention of the Court towards the order passed by the Tribunal. It is submitted that from bare perusal of the same it is obvious that the charges have been found to be not proved. The findings to this extent are explicit from bare perusal of the paragraph 12 of the order passed by the Tribunal which is extracted hereinbelow.

“12. After consideration of aforesaid facts and legal provisions, we are of the opinion that enquiry has been vitiated on the ground that author of JAG Inquiry Report (Preliminary Report) was not examined before the Enquiry Officer. Therefore, the JAG Inquiry Report has no meaning and lost its significance. The

statement of sole witness also does not confirm the involvement of appellant in any misconduct. From the presence among many people at the site of incidence, no reasonable conclusion can be drawn that the charged official was involved in the act of vandalism. The charges framed under Article-I appears as not proved.”

11. A clear and specific finding has been returned of the charges having not been proved, the Tribunal, however, has proceeded to remand the matter back to the Disciplinary Authority for consideration on quantum of punishment. It is this consequential direction which according to the learned senior counsel is unsustainable in view of the finding as extracted above. Once the Tribunal was of the opinion that the charges had not been proved, there was no occasion for examining the issue regarding the quantum of punishment. The logical corollary of such a finding would be reinstatement of the petitioner along with consequential benefits.
12. The learned counsel appearing on behalf of the respondent Railway also finds it difficult to sustain the direction for remanding the matter for consideration of quantum of punishment having regard to the findings of the Tribunal.
13. We make it clear that there is no submission that the Railways has challenged the findings of the Tribunal regarding charges not being proved.

14. The findings of the Tribunal, therefore, that the charges were not proved is not in dispute. That being so, we are in agreement with the submission advanced by the learned senior counsel that there is no occasion for leaving any scope or liberty to the Disciplinary Authority to take a decision with respect to quantum of punishment. The question as to what would be an appropriate punishment would arise only if there is any proved misconduct against an employee. Finding of a proved misconduct only would justify imposition of any punishment, whether minor or major punishment. In the absence of any finding regarding proved misconduct, there was no occasion to visit the petitioner with any penal consequence whatsoever. Thus the liberty granted by the Tribunal to “pass order imposing lighter punishment” is clearly unsustainable.

15. In so far as, the said direction as contained in paragraph 13 of the order of Central Administrative Tribunal dated 28th February, 2024 in O.A. 350/1099/2023, we observe that the Disciplinary Authority, upon remand, would only have an option to proceed as per rules/law. Reserving such liberty of the Disciplinary Authority, we set aside the direction to consider

the quantum of punishment, or granting of lighter punishment.

16. In view of the fact that the charges have not been held proved we find the petitioner to be entitled to consequential benefits on account of quashing of the impugned order of punishment.
17. At this stage, learned counsel for the Union of India has submitted that in the earlier round of litigation arising out of the earlier removal dated 3rd November, 2018 the matter has culminated by passing of the final order in W.P.C.T. 48 of 2021 whereby and where under no back wages were allowed to the petitioner and, therefore, the consequential benefits in respect of the period prior thereto cannot be reopened in the present proceedings.
18. We are not in agreement with such submission advanced by the respondent for the simple reason that the respondents themselves while passing the consequential order of reinstatement dated 8th November, 2021 in terms of the order passed in writ proceedings arising out of W.P.C.T. 48 of 2021 have maintained continuity with the earlier removal dated 3rd November, 2018 by incorporating suspension with effect from the order of removal dated 3rd November, 2018. The respondents are thus estopped from

contending that while granting consequential benefits, the period covered by the earlier removal dated 3rd November, 2018 cannot be reopened. We, therefore, do not accept the submission of the learned counsel for the Union of India in this regard.

19. It is by now clear that in respect of both the periods arising out of order of removal dated 3rd November, 2018 or based on the charge memo dated 11th January, 2022 the order of punishment is found to be unsustainable and, therefore, we clarify that the consequential benefits of the petitioner will be available to him with effect from 3rd November, 2018.

20. The writ petition stands allowed in the above terms. The same is disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)