

18.07.2024
rpan/01

WPCT 87 of 2023
The Union of India & Others
– Versus –
Tapan Kumar Dowari

Mr. Anirban Mitra
... for the Petitioners/UoI.

Affidavit-of-service filed by the petitioners be kept on record. In spite of service, no one appears on behalf of the respondent.

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 15th July, 2022 passed by the learned Tribunal in the original application (hereinafter referred to as OA), being OA 323 of 2020. By the said order the learned Tribunal quashed the chargesheet dated 18th July, 2019 issued against the respondent herein observing *inter alia* that:

‘In the present case, it is discernible that a fresh chargesheet was issued to a pensioner, not under Rule 9 of the RS (Pension) Rules but under Rule 9 of RS (D&A) Rules, that applies to a serving employee. It is, therefore, unreasonable and violative of guarantee that Rule 9 of RS (Pension) Rules enshrines. If not for any other reason it deserves to be quashed simply because the proceedings have been initiated under a provision that would not apply to a pensioner.’

Mr. Mitra, learned advocate appearing for the petitioners submits that Rule 9 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 1993 Rules) contemplates the situation where disciplinary proceeding may be instituted after retirement of the employee. The learned Tribunal has erroneously interpreted and misconstrued the provisions contained in Rule 9 of the 1993 Rules. The earlier chargesheet was cancelled due to a technical error. The cancellation of a chargesheet by an authority and issuance of a fresh chargesheet pertaining to the same incident of misconduct can be regarded as continuance of the proceeding moreso when the earlier proceedings were dropped without prejudice to further action. Such arguments, as urged, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Mitra, however, in his usual fairness, submits that an identical issue came up for consideration before a co-ordinate Bench of this Court and the writ petition preferred by the Union of India and its functionaries was dismissed [WPCT 65 of 2022 : *Union of India & Ors. v. Shri J. Sanmukh Rao*]. Let the said judgment, as produced, be kept on record.

We have heard Mr. Mitra and considered the materials on record including the judgment of the co-ordinate Bench.

Records reveal that a chargesheet dated 16th March, 2015 was issued to the respondent prior to his superannuation on 31st January, 2015. The said chargesheet was, however, cancelled/dropped by the disciplinary authority without prejudice to further action. Admittedly, the fresh chargesheet dated 18th July, 2019 was issued to the respondent was not under Rule 9 of the 1993 Rules but under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as the 1968 Rules).

The learned Tribunal rightly observed that Rule 9 of the 1968 Rules applies to a serving employee and as such, the same could not have been issued against the respondent subsequent to his superannuation. Mere incorporation of certain observations while cancelling the earlier chargesheet does not whittle down the rigors of Rule 9 of the 1993 Rules. The moment the entire proceeding is quashed and set aside and a fresh chargesheet is issued, it ought to be recorded as a fresh proceeding. The issue involved in the present writ petition is identical to the issue considered by a co-ordinate Bench in the judgment dated 14th December, 2022.

Upon dealing with all the factual issues, the learned Tribunal 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, we are not inclined to interfere with the order impugned in the present writ petition.

The writ petition, being WPCT 87 of 2023 is, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

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