

06.09.2024  
Item No.03  
Court No.11  
Avijit Mitra

**WP.CT 154 of 2024**

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

And

**Union of India & ors.**

**- versus -**

**Haripada Patra**

Mr. Debasish Basu,  
Ms. Amrita Pandey,  
Ms. Anamika Pandey

....for the petitioners

Mr. Ujjal Ray,  
Mr. S.K. Ganguly

...for the respondent

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 6<sup>th</sup> March, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA No.129 of 2015.

The operative part of the said order runs as follows:

*'In view of the above discussion, we are of the view that the disciplinary proceedings initiated against the applicant, vide memo No. E/Staff/D&A/H.P. Patra/1077 dated 21.11.2012, have been vitiated by the order of the Disciplinary Authority dated 17.04.2013. The order of the disciplinary authority dated 17.4.2013 was subsequently upheld by the Appellate Authority vide his order dated 07.10.2013 and thereafter confirmed by the Revising Authority, vide his order dated 26.09.2014. We therefore quash and set aside the order of the disciplinary authority dated 17.04.2013, the order of the Appellate Authority dated 07.10.2013 and the order of the Revising Authority dated 26.03.2014. There will be no order as to costs.'*

Mr. Basu, learned advocate appearing for the petitioners submits that the chargesheet was issued against

the respondent on 7<sup>th</sup> April, 2012 stating *inter alia* that the handing over of charge and taking over of charge was not completed by the respondent within the specified period of time. Such fact stands admitted by the respondent and accordingly the charges are borne out from the documents kept in the normal course of business and no oral evidence was necessary to prove the charges. There was sufficient evidence on record linking the respondent to the charges. The order of the appellate authority as well as the order of the revisional authority consistently establishes the guilt of the respondent. In disciplinary proceedings, the learned Tribunal ought not to have acted as an appellate authority.

Drawing our attention to the note sheet pertaining to handing over of charge and taking over of charge, Mr. Basu submits that the delay which occurred towards the same was attributable to the respondent and such delay was wilful and deliberate. In the said sequence of facts, the learned Tribunal ought not to have interfered with the order of punishment. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Ray, learned advocate appearing for the respondent, however, denies and disputes the contention of the petitioners and submits that arguments advanced on behalf of the petitioners were duly considered by the learned Tribunal and the petitioners in course of hearing had no answer to the fact that the punishment which had been imposed is not provided under the relevant rules and such

infirmity maligns the entire proceedings. In support of such contention, he has drawn our attention to the provisions of Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short, 1968 Rules).

Drawing our attention to the documents annexed at pages 22 to 27 of the writ petition, Mr. Ray argues that the delay which occurred in completing handing over of charge and taking over of charge is not totally attributable to the respondent. In fact, there was a sincere endeavour on the part of the respondent to complete the same within time. It would be explicit from the document at page 27 that the competent authority in fact arrived at a finding that the delay which occurred may be condoned with a warning to be cautious in future.

He argues that the allegation of any wilful delay on the part of the respondent ought to have been established upon exhibiting appropriate documents and by corroborating the same through oral evidence. Such procedure admittedly had not been followed by the petitioners. The document at page 36 of the writ petition would clearly reveal that the petitioners had not invited any witness for establishing the charges.

Answering our query Mr. Ray submits that the respondent has already retired on 31<sup>st</sup> August, 2018.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is a settled proposition of law that a natural person has the capacity to do all lawful things unless his capacity

has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory authority, it is just the other way. The said authority can act only in terms of the rules prescribed and operative. The documents reveal that the punishment imposed upon the petitioners is not provided under Rule 6 of the 1968 Rules. As per Rule 9(6) of the 1968 Rules, it was also incumbent upon the petitioners to support the charges by the oral evidence of witness. Admittedly, no witness was summoned on behalf of the prosecution.

In the said conspectus, we do not find any infirmity in the impugned order. 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 judgment impugned, warranting interference of this Court.

Accordingly, the writ petition being WP.CT 154 of 2024 is 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.)**