

30.07.2024
Item No.34
RP/AN
Ct. No.1

**FMA 14 of 2024
With
IA No.CAN 1 of 2023**

**Union of India & Ors.
Vs.
Gourab Roy**

Mr. Ashoke Kumar Chakraborti, Ld. ASGI
Mr. Soumak Bera
.....for UOI/Appellant

Mr. Soumabho Ghosh
Ms. Tiana Bhattacharyya
Ms. Anshumala Bansal
Mr. Richik Chowdhury
.....for Respondent

1. This intra-Court appeal by the Union of India, Ministry of Railways and the General Manager, Eastern Railways is directed against the order dated 17.05.2023 passed WPA 27455 of 2022. The respondent/writ petitioner claimed to be the brother of one Diti Roy, who was an employee of the Eastern Railway and died in harness on 11.09.2021. The respondent/writ petitioner claimed to be the sole surviving legal heir of the deceased employee/sister. In the writ petition prayer was made for issuance of a writ of declaration to declare Rule 549A under Chapter V of Indian Railway Establishment Code, Vol. I as ultra vires the Constitution of India. Though such was the prayer, we find from the impugned order that the learned Single Bench had not dealt with such prayer nor gave any finding as to the constitutional validity of such rule or otherwise.
2. The Union of India represented by the learned Additional Solicitor General had raised the question of

maintainability of the writ petition on three grounds. Firstly, the matter, being a service dispute, ought to have been agitated before the Central Administrative Tribunal. Secondly, it was contended that the person challenges the constitutional validity of the statutory provisions, the Tribunal created under Article 223 of the Constitution of India is not denuded of jurisdiction to deal with the same. In other words, it possesses sufficient jurisdiction to deal with the matter. Thirdly, he submits that the Hon'ble Single Bench of this Court which dealt with the matter did not have determination to deal with the subject issue.

3. With regard to the first issue, we agree with the submission of the learned Additional Solicitor General appearing for the appellant that the matter is undoubtedly a service matter and the respondent/writ petitioner, who claims to be the sole surviving legal heir of the deceased/erstwhile employee of the Eastern Railway, has to agitate the grievance before the Central Administrative Tribunal. In the writ petition no consequential reliefs have been sought for. Therefore, by merely seeking for a declaration to strike down the rule, may not help the respondent/writ petitioner in any manner. However, we do not wish to express anything more on that. This matter has to be agitated before the Central Administrative Tribunal. Accordingly, the appeal and the connected application are allowed and the order passed by the learned Single Bench is set aside and all findings recorded therein stand vacated and the writ petition stands dismissed as not maintainable. It will be well open to the respondent/writ petitioner to approach the Central Administrative Tribunal for appropriate relief and if the same is done the learned Tribunal will consider such a prayer uninfluenced by any observations made by the

learned Single Bench in the impugned order which has been set aside.

4. Since the respondent/writ petitioner had approached the writ Court and had obtained an order which has been now put to challenge by the Union of India and the appeal has been allowed, the respondent/writ petitioner is at liberty to approach the learned Tribunal within a period of three months from the date of receipt of the server copy of this order and if done so the learned Tribunal shall entertain the application without reference to limitation.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)