

23
18.09.2024
Ct. No. 11
Jayanta

WP.CT 196 of 2024

**Union of India & Ors.
Vs
Aritra Nandi**

Mr. S. Mukherjee
Ms. Sarda Sha

.....For the Appellants/UoI.

Mr. Chiradip Sinha
Mr. Siddhartha Sankar Mandal

.....For the Respondent.

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 3rd January, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 1455 of 2022. The said OA was preferred by the original application/respondent challenging, *inter alia*, an order dated 26th July, 2022 passed by the petitioner no. 4 rejecting the respondent's prayer for grant of compassionate allowance.

Ms. Sha, learned advocate appearing for the petitioners submits that the impugned order has been passed by the learned Tribunal without appropriately considering the provisions of RBE No. 164/2008 dated 4th November, 2008. The petitioners refused to exercise discretion in favour of the respondent taking into consideration the facts and circumstances of the case. The order dated 26th July, 2022 stands fortified by

appropriate reasons and as such no interference was called for. Prior to initiation of the disciplinary proceedings, the respondent was granted leave without pay for a period of seven and half years and in such fact situation the competent authority rightly observed that the respondent was having a strong financial status which does not warrant grant of compassionate allowance.

She contends that the learned Tribunal failed to appreciate that in the disciplinary proceedings, the respondent was found guilty of gross misconduct, negligence and lack of integrity unbecoming of a railway servant. The prior absence of the respondent for a period of seven and a half years for availing advanced coaching/training abroad was an instance of personal profiteering. In the said conspectus, the respondent was rightly denied compassionate allowance. 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. Sinha, learned advocate appearing for the respondent, however, denies and disputes the contention of Ms. Sha and submits that the contours and parameters towards grant of compassionate allowance, as detailed in RBE No. 164/2008 and Rule 65 of the Railway Services (Pension) Rules, 1993 (in short, 1993

Rules) were considered in detail and the learned Tribunal arrived at a specific finding that the respondent was not removed from service '*on account of his having committed grave offences like moral turpitude, dishonesty fraud, corruption, profiteering*'. In the said conspectus, the learned Tribunal rightly held that the respondent is entitled to compassionate allowance and that as such, no interference is called for in the present writ petition.

He further argues that the order dated 26th July, 2022 impugned in the OA did not reflect any independent application of mind and referring to a period of absence which had no nexus with the disciplinary proceedings, the respondent's prayer for compassionate allowance was refused. It is not a case that the respondent had acted dishonestly or contrary to the interest of the institution. It is also not a case moral turpitude and as such the learned Tribunal rightly held that the respondent is entitled to compassionate allowance.

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

Indisputably, the period of absence as detailed in the order dated 26th July, 2022 was regularised and the said period had no nexus with the disciplinary proceedings, as would be explicit from the charge sheet dated 5th April, 2016. Furthermore, the respondent was not charged with

fraud, dishonesty or any act of corruption in the disciplinary proceedings. The charge against the respondent was of unauthorised absence bereft of any ground of moral turpitude. No contemporaneous material on record justified the refusal of the petitioners to grant compassionate allowance to the respondent.

The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates. The impugned order does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court. The learned Tribunal upon dealing with all the factual issues arrived at specific findings and rightly held that the respondent is entitled to compassionate allowance nullifying the effect of the order dated 26th July, 2022 passed by the petitioner no. 4 herein.

In view thereof, the writ petition is dismissed.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible

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

