<u>Court No. - 2</u>

Case :- WRIT - A No. - 840 of 2023

Petitioner :- Union Of India Thru. The General Manager Northern Railway Baroda House New Delhi And Others
Respondent :- Mahendra Prakash
Counsel for Petitioner :- Raj Kumar Singh
Counsel for Respondent :- Praveen Kumar,Aradhyanayan Tiwari,Siddhartha Sinha

<u>Hon'ble Rajan Roy,J.</u>
<u>Hon'ble Om Prakash Shukla,J.</u>

1. Supplementary counter affidavit is taken on record.

2. Heard.

3. By means of this petition, the Union of India has challenged the judgement and orders dated 05.09.2019, 22.04.2022 and 03.08.2022 passed by the Central Administrative Tribunal in Original Application No.169 of 2015; Mahendra Prakash vs. Union of India and ors.

4. The facts of the case in brief are that the opposite party herein was a Head Clerk in the Indian Railways. After holding disciplinary proceedings, he was removed from service on 24.04.2010, that is, barely a few months prior to his date of superannuation which would have been 31.07.2011. Meaning thereby he was removed from service prior to attaining the age of superannuation. He challenged the said removal order vide Original Application No. 398 of 2010. The said Original

Application was allowed. The order of removal was quashed on the ground that the punishment was excessive and shook the conscious of the Tribunal. Consequently, it directed the respondents before it to take into account the totality of the circumstances and pass an order, which would be commensurate with the misconduct committed by the applicant before it, that is, the act of subletting, within a period of three months from the date of receipt of a copy of the order.

5. The misconduct was found to have been proved during the disciplinary proceeding and the Tribunal did not interfere with the misconduct but it interfered with the quantum of punishment, as mentioned herein above. As the said judgment was not complied, therefore, contempt proceedings were initiated. During the contempt proceedings the Tribunal was apprised that another punishment which is in the form of compulsory retirement from the date of his removal, that is, 24.04.2010 is to be visited upon by the Officer. The contempt proceedings were disposed of. Thereafter an order was passed on 19.06.2014, compulsorily retiring the opposite party herein, with effect from 21.04.2010, in terms of the judgment of the Tribunal dated 10.04.2014 rendered in Original Application No.398 of 2010. At this very stage, it may be mentioned that compulsory retirement is prescribed as a punishment under the Rule 6 (vii) of the Railway Servants (Discipline and Appeal)

Rules, 1968, which is distinct from compulsory retirement simplicitor based on the retirement rules. Even after such compulsory retirement by way of punishment pension and post retiral dues are permissible and according to petitioners' counsel they are being paid as per Rules. The opposite party has been treated as compulsory retired with effect from 24.04.2010, that is, about fifteen months prior to the date on which he would have attained the age of superannuation and actually retired but for the order of the removal dated 24.04.2010.

6. This order of compulsory retirement was put to challenge by the opposite party by means of Original Application No.332/00169 of 2015. The said Original Application has been allowed. The Tribunal was persuaded by the argument of the opposite party/ applicant that by the time of passing of the judgment dated 19.04.2014, the opposite party/ applicant had already attained the age of superannuation and retired on 31.07.2011, therefore, any action in pursuance to the earlier judgment of the Tribunal dated 19.04.2014 could only have been in terms of the Pension Rules and not the Disciplinary Rules because the Master-Servant relationship had ceased. This argument has found favour with the Tribunal and it has accordingly quashed the order of compulsory retirement, leaving it open for the Union of India to take action in terms of the Pension Rules.

7. Being aggrieved by the aforesaid judgment, the Union of India has come before us.

8. The contention of learned counsel for opposite party before us was on the same lines, on the same reasoning, as has already been considered by the Tribunal. Here also the submission is that the Master-Servant relationship ceased, once the opposite party/ applicant had attained the age of superannuation on 31.07.2011, whereafter consequent to the earlier judgment of the Tribunal dated 19.04.2014, quashing the removal order but granting liberty to take any other action commensurating with the misconduct conducted by the applicant, the only action permissible was under the Pension Rules, which could be in the form of proceedings for reduction, forfeiture of pension, etc. It is also an additional argument by learned counsel for the opposite party that there is an Indian Railway Manual under which for the misconduct of subletting a recovery of rent could be made in excess of 10%. As regards this last argument based on Indian Railway Manual, we do not find that this argument was ever raised before the Tribunal. We do not accept it and reject it outrightly.

9. The entire premise on which the Tribunal has allowed the Original Application and on which the same is sought to be sustained by learned counsel for opposite party is the factum of the opposite herein attaining the age of superannuation on

31.07.2011, thereby severing the relationship of Master and Servant between the parties herein. However, the reasoning is apparently fallacious. At that point of time the opposite party/ applicant had been removed from service, therefore, there was no question of him attaining the superannuation. The said removal order was quashed by the Tribunal on 19.04.2014 and liberty was granted to pass a fresh order. Once such liberty was granted to pass a fresh order commensurate with the misconduct committed by the applicant, then such fresh order could only have been under the disciplinary Rules and this would be obviously in the context of the disciplinary proceedings which had already been held and would have to be given effect from the date of the passing of the removal order and not thereafter. The liberty was granted in continuation of the disciplinary proceeding which had been passed on 24.04.2010 which gave rise to aforesaid Original Application No.398 of 2010. Any other punishment as a substitute of the original punishment of removal had to relate back to the date of the initial punishment, that is, 24.04.2010 and could not be otherwise.

10. The opposite party/ applicant cannot be permitted to derive undue mileage based on the liberty granted by the Tribunal on 10.04.2014. The pension rules in these circumstances would have no play. As far as Rule 9 (ii)(a) of the Pension Rules, 1972 is concerned, the same would apply where during pendency of disciplinary proceedings, but prior to passing of any order of punishment, the officer or employee attains the age of superannuation and actually retires. In that eventuality proceedings would be held in terms of Rule 9 (ii) (a) of the Pension Rules, 1972 but not in a case where the proceedings were concluded and a punishment order was passed while the officer or employee was in service, as in this case. Therefore, the Tribunal has erred in not noticing the distinguishing features which excluded the application of Rule 9 (ii) (a) of the Pension Rules, 1972 in this case, which were, that an order of punishment had already been passed, the same was assailed and it was set aside only on the ground of quantum of punishment giving liberty to the disciplinary authority to pass a fresh order taking into consideration the misconduct, which in the facts and circumstances of this case would be effective obviously from the date of the initial order of punishment and not any subsequent date.

11. if the intention of the Tribunal in its judgment dated 10.04.2014 was that action could be taken only under the pension rules, then it would have specifically stated so. Moreover there is not much of a difference so far as post retiral dues of the opposite party are concerned. If the opposite party/ applicant had actually retired on attaining the age of superannuation, on 31.07.2011 which he did not, then his post retiral dues would have been determined on the basis of last emoluments drawn on the said date, whereas now the same have been determined as on 22.04.2010. The judgment of the Tribunal dated 10.04.2014 was never put to challenge by the opposite party/ applicant having accepted the same.

12. Purely in the facts of this case, we are of the opinion that the Tribunal has erred in interfering in the matter. The arguments advanced by learned counsel for opposite party are not acceptable. We, therefore, quash the judgment impugned passed by the Tribunal, as also the judgment passed on the review application, which had been rejected on technical ground that the grounds taken therein were beyond the scope of renewal.

13. The petition is **allowed**.

14. Whatever retirement dues are payable as per rules, based on the order of compulsory retirement dated 22.04.2010 shall be released in favour of the opposite party, positively within three months.

15. Consequences shall follow accordingly.

(Om Prakash Shukla, J.)(Rajan Roy, J.)

Order Date :- 10.9.2024
Arnima