

19.03.2025
Ct. No.4
Item No. 22
(P.A.)

W.P.C.T. 96 of 2024

**Tridib Kumar mahapatra
Vs.
Union of India & Ors.**

Mr. S. K. Datta,
Mr. Barun Chatterjee
...for the Petitioner
Mr. Soumak Bera,
Mrs. Moumita Mondal
...for the Respondents

1. Heard the learned counsels representing the petitioner and the learned counsels representing the respondents.
2. The writ petitioner was working as Loco Pilot (Goods) in the Kharagpur Division of South Eastern Railway. On 3rd November, 2018 he was served with an office order stating that some incumbents had held an unlawful demonstration in front of the Combined Crew Lobby of the Kharagpur Railway Station.
3. There was an allegation that government officials had been manhandled and that the demonstrators prevented other government officials from performing their official duty and also misbehaved with higher railway administrative officers.
4. Assigning such reasons the petitioner was

removed by the order dated 3rd November, 2018 without any inquiry. The appeal against the said order was dismissed. Being aggrieved by the order of removal as well as the appellate order the applicant preferred O.A. No. 638 of 2019 before the Central Administrative Tribunal which was disposed of on 15.01.2020 with a direction upon the applicant to approach the Revisional Authority and the Revisional Authority was directed to issue a reasoned and speaking order within 3 months. Pursuant to the said order passed by the Tribunal the Revisional Authority passed an order setting aside the order of the Appellate Authority and the appellate authority was directed to dispose of the appeal of the applicant afresh by following proper procedure of the Railway Servants (Discipline & Appeal) Rules 1968.

5. Thereafter challenging the order of the Revisional Authority the applicant preferred another O.A. No. 832 of 2020. The Tribunal vide order dated 12.4.2021 quashed the order of the Revisional Authority and the respondents were directed to act strictly in accordance with law. Challenging the said order of the Tribunal passed in O.A. 832 of

2020 the respondents preferred Writ Petition 74 of 2021 before this Hon'ble High Court. The Hon'ble High Court affirmed the order of the Tribunal by passing the following :

"The coordinate Bench of this Court had meticulously dealt with the issues involved and disposed of the writ petition, WPCT 48 of 2021 affirming the order passed by the learned Tribunal and observing inter alia:-

"But it is needless to mention that the order of removal has been set aside. He needs to be reinstated in his service but whether he should be allowed to discharge his function regularly or to be kept under suspension is for the authority to decide."

Judicial propriety demands that the findings arrived at on the rudiments of similar facts by a Coordinate Bench should be given respect and should be followed. It also appears that the petitioners herein had already complied with the order dated 6th September, 2021 passed in WPCT 48 of 2021 and had issued a memo dated 8th November, 2021 reinstating the applicant in O.A 831 of 2020.

In view thereof, no interference is called for in the present writ petition. The order dated 12th April, 2021 passed by the learned Tribunal is affirmed and the petitioners herein are directed to take necessary follow up steps, as already taken in respect of the applicant in O.A.831 of 2020.

With the above observations and directions the writ petition, being WPCT 74 of 2021 is disposed of."

6. In accordance with the order passed by this Hon'ble Court dated 16.11.2021 the

respondents passed an order dated 10.12.2021 reinstituting the applicant in service but kept him under suspension from the date of the original order of removal from service until further orders it was also mentioned in the said order that *“the Railway Administration reserves the right to take fresh action in terms of Rule 9 of R.S. (D&A) Rules , 1968 by issuing fresh major penalty charge sheet as deemed fit and proper considering the circumstances of the case without prejudice.”*

7. An order dated 28.12.2021 was passed placing the applicant under deemed suspension with effect from the date of removal and a charge-sheet was issued vide order dated 11.01.2022. The applicant submitted his reply to the charge sheet. Inquiry was held by appointing an enquiry officer. The enquiry officer submitted his report dated 15.12.2022 against which the applicant submitted his representation on 02.01.2023. On 26.04.2023 punishment notice was issued removing the applicant from Railway service with immediate effect without any compassionate allowance. The applicant preferred appeal dated 08.05.2023 against the order of his removal. The Appellate Authority rejected the appeal vide order dated 17.07.2023. Being aggrieved by such order of rejection by the Appellate Authority, the applicant

once again approached the Tribunal and filed O.A. No. 350/1100/2023 wherein the impugned order has been passed.

8. Learned senior counsel appearing on behalf of the petitioner has drawn attention of the Court towards the order passed by the Tribunal. It is submitted that from bare perusal of the same it is obvious that the charges have been found to be not proved. The findings to this extent are explicit from bare perusal of the paragraph 12 of the order passed by the Tribunal which is extracted hereinbelow.

“12. After consideration of aforesaid facts and legal provisions, we are of the opinion that enquiry has been vitiated on the ground that author of JAG Inquiry Report (Preliminary Report) was not examined before the Enquiry Officer. Therefore, the JAG Inquiry Report has no meaning and lost its significance. The statement of sole witness also does not confirm the involvement of appellant in any misconduct. From the presence among many people at the site of incidence, no reasonable conclusion can be drawn that the charged official was involved in the act of vandalism. The charges framed under Article-I appears as not proved.”

9. A clear and specific finding has evolved whereby the charges have not been proved, the Tribunal, however, has proceeded to remand the matter back to the Disciplinary Authority for consideration on

quantum of punishment. It is this consequential direction which according to the learned senior counsel is unsustainable in view of the finding as extracted above. Once the Tribunal was of the opinion that the charges had not been proved, there was no occasion for examining the issue regarding the quantum of punishment. The logical corollary of such a finding would be reinstatement of the petitioner along with consequential benefits.

10. The learned counsel appearing on behalf of the respondent Railway also finds it difficult to sustain the direction for remanding the matter for consideration of quantum of punishment having regard to the findings of the Tribunal.

11. We make it clear that there is no submission that the Railways has challenged the findings of the Tribunal regarding charges not being proved.

12. The findings of the Tribunal, therefore, that the charges were not proved is not in dispute. That being so, we are in agreement with the submission advanced by the learned senior counsel that there is no occasion for leaving any scope or liberty to

the Disciplinary Authority to take a decision with respect to quantum of punishment. The question as to what would be an appropriate punishment would arise only if there is any proved misconduct against an employee. Finding of a proved misconduct only would justify imposition of any punishment, whether minor or major punishment. In the absence of any finding regarding proved misconduct, there was no occasion to visit the petitioner with any penal consequence whatsoever. Thus the liberty granted by the Tribunal to “pass order imposing lighter punishment” is clearly unsustainable.

13. In so far as, the said direction as contained in paragraph 13 of the order of Central Administrative Tribunal dated 28th February, 2024 in O.A. 350/1100/2023, we observe that the Disciplinary Authority, upon remand, would only have an option to proceed as per rules/law. Reserving such liberty of the Disciplinary Authority, we set aside the direction to consider the quantum of punishment, or granting of lighter punishment.

14. In view of the fact that the charges have not been held proved we find the petitioner to be entitled to consequential benefits on account of quashing of the impugned order of punishment.

15. At this stage, learned counsel for the Union of India has submitted that in the earlier round of litigation arising out of the earlier removal dated 3rd November, 2018 the matter has culminated by passing of the final order in WP.CT 74 of 2021 whereby and where under no back wages were allowed to the petitioner and, therefore, the consequential benefits in respect of the period prior thereto cannot be reopened in the present proceedings.

16. We are not in agreement with such submission advanced by the respondent for the simple reason that the respondents themselves while passing the consequential order of reinstatement in terms of the order passed in writ proceedings arising out of WP.CT 74 of 2021 have maintained continuity with the earlier order of removal dated 3rd November 2018 by incorporating suspension with effect from the order of

removal dated 3rd November 2018. The respondents are thus estopped from contending that while granting consequential benefits, the period covered by the earlier removal dated 3rd November 2018 cannot be reopened. We, therefore, do not accept the submission of the learned counsel for the Union of India in this regard.

17. It is by now clear that in respect of both the periods arising out of order of removal dated 3rd November, 2018 or based on the charge Memo. dated 11th January, 2022 the order of punishment is found to be unsustainable and, therefore, we clarify that the consequential benefits of the petitioner will be available to him with effect from 3rd November, 2018.

18. The writ petition stands allowed in the above terms. The same is disposed of.

19. The respondents are to comply with the directions within eight weeks from the date of receipt of copies of this order.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)