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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th July, 2022

+ **W.P.(C) 1433/2008**

UOI & ORS

..... Petitioner

Through: None

versus

MUKH RAM SINGH

..... Respondent

Through: Mr. Vikram Singh Jakhar, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, CHIEF JUSTICE (ORAL)

1. The instant petition under Article 226/227 of the Constitution of India has been filed for quashing the judgment and Order dated 08.11.2007, passed by the Central Administrative Tribunal (*hereinafter referred to as 'the Tribunal'*), in O.A. No.1941/2006.

2. The facts of the case reveal that the Respondent/employee was working as a Senior Booking Clerk in the Parcel office of the Northern Railway. It is stated that on 23.03.1995, at around 20:30 Hrs when the Respondent/employee left the office, the office was inspected by the Vigilance team at around 10:00 PM and a shortfall of Rs.2,323/- was found in the Government cash. It is stated that the Respondent/employee was charge-sheeted for shortfall of Rs.2,323/- in the Government cash and an additional charge was also leveled against him stating that he allowed the private persons/agents to prepare and issue Railway Receipts beyond

working hours. There was also an allegation that the Respondent/employee allowed/arranged loading of parcels for which Railways freights was not collected. It is stated that the charge-sheet in the matter was issued on 13.09.1995 and the Respondent/employee submitted a reply to the charge-sheet pointing out certain errors in the charge-sheet. It is stated that the Disciplinary Authority withdrew the charge-sheet as there were inadvertent errors and a fresh charge-sheet was issued on 27.09.1996. It is stated that an Inquiry Officer was appointed and the Inquiry Officer submitted his detailed report exonerating the Respondent herein/employee. It is submitted that as suggested by the Inquiry Officer *vide* his note dated 01.09.1997, the case was reconsidered in the light of Rule 13 of the Railway Servant (Discipline and Appeal) Rules, 1968 and it was decided that the Sr. DCM is the Competent Authority to impose the penalty of dismissal on the Respondent herein/employee. It is stated that the charge-sheet dated 27.09.1996 was withdrawn and a fresh charge-sheet dated 18.03.1998 was issued. It is stated that *vide* Order dated 13.09.1999, the Disciplinary Authority held the Respondent herein responsible for the shortage of Government cash of Rs.2,323/-. The Disciplinary Authority inflicted a punishment of reduction in pay from stage of Rs.6050-5300 in the scale of Rs.5000-8000 for a period of five years and in appeal the period of five years was reduced to three years.

3. The Order of the Disciplinary Authority was challenged by the Respondent herein/employee before the Tribunal by filing an Original Application, being O.A. No.2123/2002. It is stated that *vide* Order dated 12.03.2003, the Tribunal disposed of the said Original Application, quashing the Order of the Disciplinary Authority. It is stated that a fresh disagreement

note along with inquiry report was given to the Respondent/employee on 16.02.2004 and the Respondent/employee was asked to file his reply. It is stated that the Respondent/employee filed his reply and the Disciplinary Authority, after considering the reply, passed a reasoned Order on 09.03.2005 reducing the salary of the Respondent/employee from 6950/- to 6800/- in the grade of Rs.5000-8000. It is stated that the appeal filed by the Respondent/employee against the Order of the Disciplinary Authority was rejected by the Appellate Authority *vide* Order dated 04.08.2005. It is stated that against the Order dated 04.08.2005, the Respondent herein/employee filed another Original Application, being O.A. No.1941/2006, before the Tribunal. It is stated that the said OA was disposed of by the Tribunal *vide* Order dated 08.11.2017 and the Order passed by the Disciplinary Authority has been set aside. It is this Order which has been challenged by the Petitioner in the instant petition.

4. Relevant portions of the Order dated 08.11.2017, passed by the Tribunal, reads as under:

“5. On the merits of the case also, counsel submits that there was nothing substantiated against the applicant, and admittedly the raid was held well after his departure, and the charges per se showed that there was lot of confusion in the matter of implicating the applicant. The proceedings, however, were binding him for over a decade affecting his morale and at least at this stage it should be ensured that he is extricated from the unenviable situation.

6. We had occasion to hear Mr. Tiwary, who, with reference to the counter affidavit, submitted that the proceedings had been carried out in the most meticulous fashion and the criticism raised is not of

any substance. According to him, the applicant had not shown devotion to duty and had been in hand in gloves with his fellow employee Mr. Gupta and evidently there was a conspiracy and the administration was justified in proceeding in the matter. The disciplinary authority had found bona fide that the inquiry officer had adopted a relaxed standard and, in fact, therefore, had a duty to intervene and this alone had been done and, therefore, there was no necessity for interference.

7. We would note that the matter has been hanging fire for a considerable period of time. In categorical terms, the inquiry officer had found that there were no adequate circumstances where under the Applicant could be successfully proceeded against his misfeasance. The approach of the disciplinary Authority on the other hand evidently had been mechanical, without reference to his jurisdictional power defined under the rules, and obviously he has overstepped the prescriptions for adopting a course as authorized by Rules. Therefore, we are of the opinion that ultimate order passed by him imposing penalty, as well as appellate order, were illegal and consequently unenforceable. In this view, we set aside the impugned order as well as the appellate order and direct that the applicant should be restored to a position as if he has not suffered any penalty, in respect of a conduct, which is the subject matter of this application. Consequential orders are to be issued by the competent authority within two months. We make no order as to costs.” The Respondent/employee has attained the age of superannuation in the year 2006 and he is aged about 75 years. At this juncture, this Court does not find it fit to remand the case to the Disciplinary Authority to furnish a note of disagreement and to proceed further in the matter.”

5. The Tribunal has set aside the Order of punishment as proper

opportunity of hearing was not given to the employee meaning thereby reasons were not recorded for disagreement and the Disciplinary Authority has not recorded its own finding on such charge which it has held to be proved. The Order passed by the Disciplinary Authority disagreeing with the enquiry report dated 16.02.2004 reads as under:

“In compliance of the Judgment of Hon'ble CAT/NDLS passed in O. A. No.2123/03 and in continuation to the notice of even No. dated 04.08.2003, I have gone through the case afresh and the decision given earlier.

I have gone through the enquiry report and I do not agree with findings of the Enquiry Officer that you are not responsible for shortage of cash. Concerned staff is responsible for handing over the Government cash after performing his duty, which should have been proved.

A copy of enquiry report is once again sent herewith alongwith the above note of disagreement for information and submitting your representation, if any. A suitable decision will be taken after considering your representation and the report of the Enquiry Officer. In case no representation is received within 15 days of its receipt, it will be presumed that you have nothing to represent and orders will be passed accordingly.”

6. The aforesaid Order passed by the Disciplinary Authority reveals that the Disciplinary Authority did not agree with the findings of the Enquiry Officer. By merely mentioning that the Disciplinary Authority does not agree, will not serve the purpose. The Disciplinary Authority ought to have recorded its findings and ought to have assigned reasons based on the evidence as to why charges against the employee stand proved. The Tribunal in its Order has, therefore, rightly held that the employee was not furnished

the note of disagreement and reasons were not assigned for disagreement and, therefore, the Original Application filed by the employee was allowed by the Tribunal on the basis of procedural lapses on the part of the Disciplinary Authority. This Court does not find any reason to interfere with the Order dated 08.11.2007, passed by the Tribunal in O.A. No.1941/2006.

7. It is pertinent to note that when the matter was listed on 04.07.2022, no one appeared on behalf of the Petitioner/Union of India. Court Notice was issued by this Court and in spite of service of the Notice, today also there is no appearance on behalf of the Petitioner/Union of India. The Respondent herein/employee, who is 75 years of age, is not receiving terminal dues as there is interim Order in the matter.

8. In the considered opinion of this Court and keeping in view the totality of the circumstances of the case, the Order of the Tribunal does not warrant any interference. It is made clear that the Respondent/employee would be entitled to notional fixation of salary and other dues. However, the Respondent/employee would not be entitled to back-wages.

9. With these observations, the writ petition is dismissed along with the pending application(s), if any. 49

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 11, 2022

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