

(2011) 09 CAL CK 0005

In the Calcutta High Court

Case No : F.M.A. No. 180 of 2011 and C.A.N. No. 8648 of 2010

Dayal Kumar Nayak

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2012) 5 CHN 740

Hon'ble Judges : Shukla Kabir (Sinha), J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra and Biswaranjan Bhakat, for the Appellant; Tapan Kumar Mukherjee and Abhijit Ganguly, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been filed in connection with the appeal preferred from the order dated 8th September, 2010 whereby and whereunder a learned Judge of this Court dismissed the writ petition on merits. Going through the impugned order, we find that the learned Single Judge which dismissing the writ petition specifically held that the appellant/writ petitioner herein cannot be allowed to take a plea that merely because he was transferred, the authority issuing the charge-sheet did not have the jurisdiction. We are unable to approve the aforesaid decision of the learned Single Judge.

2. In the present case, D.I.G.P., C.R.P.F., Siliguri started the disciplinary proceedings against the appellant/writ petitioner by issuing the charge-sheet on 31st January, 2009 when the appellant/writ petitioner herein was admittedly serving under the said D.I.G.P., C.R.P.F., Siliguri. In other words, the D.I.G.P., C.R.P.F., Siliguri was the disciplinary authority of the appellant/petitioner herein at the time of issuance of the charge-sheet. Subsequently, the appellant/writ petitioner herein was transferred to Srinagar in the State of Jammu and Kashmir under a different disciplinary authority.

3. Since the appellant/writ petitioner was transferred in the midst of the disciplinary proceedings, the earlier disciplinary authority, i.e. D.I.G.P., C.R.P.F.,

Siliguri ceased to continue as the disciplinary authority of the appellant/petitioner herein.

4. The D.I.G.P., C.R.P.F., Siliguri cannot remain as the disciplinary authority when the appellant/writ petitioner herein was transferred to the jurisdiction of another disciplinary authority.

5. The appellant/petitioner was transferred from Siliguri in the month of July, 2009 to Srinagar in the State of Jammu and Kashmir and the D.I.G.P., C.R.P.F., Siliguri, therefore, lost all control and jurisdiction over the appellant herein as the disciplinary authority after the aforesaid transfer of the appellant.

6. In view of the transfer of the appellant/petitioner to the jurisdiction of another disciplinary authority, the new disciplinary authority was required to take appropriate decision regarding continuance of the pending disciplinary proceeding against the appellant-petitioner herein.

7. The learned counsel representing the respondents, however, submitted that in view of the interim order passed earlier by this Court, no decision could be taken by the competent authority regarding continuance of the enquiry proceeding. As a matter of fact, on 4th October, 2010 a Division Bench of this Court passed an interim order restraining the respondents from proceeding with the disciplinary proceedings against the appellant/petitioner until further orders.

8. The new disciplinary authority was undoubtedly, not impleaded as respondents in the present proceedings and, therefore, new disciplinary authority was not in any way covered by the aforesaid interim order.

9. The D.I.G.P., C.R.P.F., Siliguri being the erstwhile disciplinary authority has no jurisdiction to proceed with the disciplinary proceedings pending against the appellant-petitioner and therefore, this Court by an interim order restrained the erstwhile disciplinary authority from proceeding the disciplinary proceedings against the appellant/petitioner.

10. The competent authority namely, the present disciplinary authority of the appellant/petitioner was never restrained by any interim order of this Court from proceeding with the pending disciplinary proceedings against the appellant-petitioner herein. The present disciplinary authority however, did not chose to proceed against the appellant/petitioner herein with the pending disciplinary proceedings for a considerable period. It can be said that the concerned Disciplinary Authority had voluntarily abandoned the disciplinary proceedings initiated against the appellant/petitioner herein on the basis of the charge-sheet issued by the earlier disciplinary authority on 31st January, 2009.

11. For the aforementioned reasons, the disciplinary proceedings initiated by the D.I.G.P., C.R.P.F. Siliguri cannot be allowed to be continued by the said D.I.G.P., C.R.P.F., Siliguri in view of the transfer of the appellant/petitioner to the jurisdiction of a different disciplinary authority.

12. For the reasons discussed hereinabove, the impugned order under appeal passed by the learned Single Judge cannot be sustained and the same is accordingly set aside. The respondents herein are restrained from proceeding with the disciplinary proceedings against the appellant/petitioner herein since the said appellant/petitioner has been transferred to the jurisdiction of a new disciplinary authority.

13. With the aforesaid directions and observations both the appeal and the application stand disposed of.

14. In the facts of the present case, there will be however, no order as to costs. Let xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates of the parties on the usual undertakings.

Shukla Kabir (Sinha), J.

I agree.