(2019) 09 CAL CK 0149

In the Calcutta High Court

Case No : Wp. Central Tribunal (WPCT) No. 144 Of 2016

Union Of India & Ors	APPELLANT
Vs	
Partha Bhaduri	RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 9, 10(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 CAL CK 0149

Hon'ble Judges : Dipankar Datta, J;Saugata Bhattacharyya, J

Bench : Division Bench

Advocate : Jayanta Banerjee, Shankar Ranjan Sen, Soumyo Mukherjee, Sachetan Ghosh

Final Decision : Dismissed

Judgement

1. Aggrieved by the order dated 19th April, 2016 passed by a judicial member of the Central Administrative Tribunal, Calcutta Bench (hereafter the tribunal) allowing O.A. 928 of 2015 (Partha Bhaduri -vs.- Union of India & Ors.), the respondents in the original application have invoked the writ jurisdiction of this Court by filing this application under Article 226 of the Constitution of India.

2. By the order impugned, the tribunal directed the respondents before it to release the sum recovered from the retiral benefits of the original applicant (hereafter Partha) in a sum of Rs.6,53,180/- within a month from date of communication of its order with interest @ 8% per annum.

3. The case pleaded in the original application was that Partha retired from the service of the Eastern Railway on 28th February, 2015 and thereafter, Rs.6,53,180/- was deducted from his retiral benefits without conducting any disciplinary proceedings against him.

4. The tribunal heard the parties and on consideration of the rival contentions, held the action of recovery of such sum from the retiral benefits of Partha

without initiation of any disciplinary proceedings to be illegal and not in accordance with law. The tribunal also noted that recovery of any amount due to the employer because of an act of omission/commission on the part of an employee, who has since retired, resulting in pecuniary loss to the employer could have been resorted to only in terms of Rule 9 of the Railway Services (Pension Rules) [hereafter the Pension Rules] but no justification was proffered as to why the Pension Rules were not adhered to.

5. Appearing in support of the writ petition, Mr. Banerjee, learned advocate contended that an employee, like Partha, merely because of his retirement, cannot be allowed to go scot-free after causing pecuniary loss to his employer and, therefore, the loss suffered by the employer was recovered from the retiral benefits due and payable to Partha; and there is no illegality in such an action taken for recovery to compensate for the loss suffered by the employer.

6. Realising that the aforesaid contention would not impress us, Mr. Banerjee prayed that liberty may be granted to the employer to initiate proceedings against Partha under Rule 9 of the Pension Rules.

7. Having heard Mr. Banerjee, we find no reason to take a view at variance from the one taken by the tribunal. We also find no reason to grant liberty to the employer to initiate proceedings against Partha at this stage. The reasons for such conclusions follow hereafter.

8. The first contention need not detain us for a moment. If indeed Partha had caused pecuniary loss to the employer, the employer was within its right to recover such loss from the pay and allowances of Partha but only after initiation of a proceeding in this behalf, as has been discussed by the tribunal in extenso. The employer proceeded against Partha in a manner as if the principle of audi alteram partem does not exist. The finding returned by the tribunal that no established procedure was followed before penalising Partha, is thus affirmed.

9. Insofar as the second contention is concerned, it is observed from the order of the tribunal that at least on 7th February, 2015, there was a report implicating Partha. Since Partha retired by the end of February, 2015, the employer could have either issued chargesheet prior to retirement and disciplinary proceedings initiated thereby could have also been taken to its logical conclusion after his retirement. Even if the employer were disabled to issue the chargesheet to Partha prior to his retirement, nothing prevented the employer to invoke the provisions of Rule 9 of the Pension Rules as has been noted above. Without taking recourse to the established procedure, the employer unilaterally deducted Rs.6,53,180/- from the retiral benefits of Partha.

10. The liberty prayed for by Mr. Banerjee cannot be granted in view of sub- rule (2) of Rule 10 reading as follows :

"(2) The departmental proceedings referred to in sub-rule (1) -

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) If not instituted while the railway servant was in service, whether before his retirement or during his re-employment -

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(ii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service."

(emphasis supplied)

11. Even if we were to grant liberty for issuance of a chargesheet against Partha today, the same would infringe sub-clause (ii) of clause (b) of sub-rule (2). The tribunal has recorded in its order that the alleged misconduct occurred in 2014. A chargesheet in respect of the alleged misconduct committed in 2014 cannot be permitted to be issued today, in view of the bar created by the aforesaid provision. If indeed a prayer had been made before the tribunal when it was in seisin of O.A. 928 of 2015 or even before a coordinate Bench, which had the occasion to consider the writ petition on 29th June, 2016, 13th July, 2016 and 21st July, 2016, the tribunal/the coordinate Bench could have considered the desirability of granting liberty to the employer to proceed against Partha under Rule 9 of the Pension Rules having regard to the allegation of pecuniary loss caused to it by him. To our utter dismay, we find that on all the three dates, prayers for adjournment were made by Mr. Banerjee on behalf of the petitioners and on such prayer being granted by the coordinate Bench, there was no effective hearing of the writ petition. Such prayers for adjournment must not enure to the benefit of the employer and the detriment of Partha. By this time, more than four years have lapsed and the petitioners themselves have to blame for the position in which they find themselves now.

12. The result of the aforesaid discussion is that there can be no interference with the order of the tribunal, which was justified on facts and in the circumstances to direct release of Rs.6,53,180/- together with interest @ 8% per annum in favour of Partha.

13. We direct that the sum due and payable to Partha in terms of the impugned

order shall be released in his favour as early as possible but positively by 15th December, 2019.

14. The writ petition stands dismissed, subject to the direction as above.

15. There shall be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

