

(1999) 06 GAU CK 0055
In the Gauhati High Court
Case No : Civil Rule No. 4112 of 1998

Union of India (UOI) and Others

APPELLANT

Vs

Banka Behari Nath

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Penal Code, 1860 (IPC) — Section 302, 323, 325, 34

Citation : (1999) 3 GLR 201

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : B.K. Sarma and P.K. Tewari, for the Appellant; R. Dutta and G. Dutta, for the Respondent

Judgement

P.G. Agarwal, J.—In this writ petition the Union of India, through the General Manager, N.F, Railway has challenged the order passed by the Central Administrative Tribunal on 8.1.1998 bringing O.A. No. 169/95.

2. Heard Mr. B.K. Sharma, learned Standing Counsel for the Petitioner N.F. Railway and Mr. R. Dutta, learned Counsel for the Respondent.

3. The Respondent Banka Behari Nath, a railway employee, was convicted in a Criminal Case u/s 302/323/325/34 IPC on 24.2.1988. His employer, the railways put him under suspension on 5.4.1988 and thereafter in exercise of his powers under Article 311(2) of the Constitution removed him from service vide order dated 5.10.1988. The Respondent preferred an appeal against the order of conviction and the conviction u/s 325/34 IPC was confirmed but the conviction u/s 302/323/34 IPC was set aside. It may be mentioned here that in the meantime the Respondent also attained the age of superannuation on 31.10.91. Some time in the year 1993 the Respondent approached the Central Administrative Tribunal in Original Application No. 110/93 challenging the order of dismissal from service and the learned Tribunal vide order dated 31.10.1994 set aside the order of removal from service on the ground that no notice as required under the Railway

Rules was served on the Respondent before awarding punishment. The Tribunal, however, allowed the disciplinary authority to pass fresh orders after serving necessary notice within a period of 3(three) months. As no notice was received by the Respondent within 3 months, he preferred the Original Application No. 269/95 before the Central Administrative Tribunal. In the meantime, the Railways also served a notice asking the Respondent to show cause as to why he should not be removed from service. The learned Tribunal quashed the said notice vide impugned order on the ground that as only a period of three month was allowed to the Union of India for serving notice and as no notice was served within that period, the notice is beyond time and not maintainable. The Tribunal also held that the applicant ceased to be a railway servant and no disciplinary proceeding could have been initiated against him. The Petitioners were directed to pay the applicant his wages, pension, gratuity, etc., as if he was in service till he attained the age of superannuation. Hence, the present petition.

4. So far the quashing of show cause notice on the ground that it was not issued within a period of 3 months as provided in Original Application No. 110/93 is concerned, we find that the direction was in the following words:

The disciplinary authority (Respondent No. 4) is directed to pass the fresh order within a period of 3 months from the date of communication of a copy of this order to him.

Although a period of three month was provided for taking necessary action, it did not act as a period of limitation so that with lapse of a period of 3 months no action could be taken. In view of the earlier observation of the Tribunal the action was required to be taken against the Respondent railway employee. As such, the question of quashing the impugned show cause notice dated 9.12.1995 on the above ground, is not tenable.

5. There is no dispute at the Bar that the Respondent had attained the age of superannuation on 31.10.1991. The relevant portion of the show cause notice dated 9.12.1995 at Annexure-A to the writ petition, reads as follows:

6. Having regard to the overall circumstances of the case and your conduct leading to your conviction in a most heinous crimes, and on careful perusal of the judgment, I am of the opinion that you are not a fit person to be retained in a Railway service and that your conduct leading to your aforesaid criminal conviction is such that the penalty pf removal should be imposed upon you in exercise of power under Rule 14(1) of the RS(D and A) Rules.

6. Apparently, in view of the fact that the Respondent had already if attained the age of superannuation in the year 1991, there was no scope of awarding penalty of removal on the Respondent and as such the notice (Annexure-A) is bad in law and cannot be acted upon.

7. In the light of the foregoing discussion and the facts and circumstances of the case, we dispose of the writ petition with direction that the Appellants will be at

liberty to take any fresh action against the Respondent as provided under the relevant provisions of law and Rules and pass any fresh order. Considering the fact that this matter is pending for last 11 years, we further provide that action, if any, I shall be completed within a period of 4(four) months from the date of this order failing which the Petitioner - Railway authorities will not be entitled to initiate any action in the matter.

8. In the result, the order passed by the learned Central Administrative Tribunal in Original Application No. 269/95 is set aside. The writ petition stands disposed of.

We make no order as to cost.