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Court : Chennai

Decided On : Jan-11-2017

Judge : K.K. Sasidharan &Amp; V. Parthiban

Appeal No. : W.P. Nos. 577 of 2017 & 44200 of 2016 & W.M.P. Nos. 624 of 2017 & 38041 of 2016

Appellant : A. Manju and Another

Respondent : Union of India Owning Southern Railway rep. by its Additional Divisional Railway Manager and Others

Judgement :

(Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the orders dated 1.11.2016 of the 5th respondent Tribunal made in OA Nos. 310/1409 and 310/1410 of 2016 respectively and quash the same as being erroneous illegal and unjust and allow the prayer of the petitioners.)

Common Order:

V. Parthiban, J.

1. Aggrieved by the order, dated 1.11.2016 of the 5th respondent, Central Administrative Tribunal (in short, 'the Tribunal') in O.A.Nos. 310/1409 and 310/1410 of 2016 respectively, the petitioners have come forward with the present Writ Petitions.

2. The petitioners approached the Tribunal, for the following prayer:

"To set aside the order No.M/C 415/DAR/62/2016 dated 28.3.2016 read with Order No.M/C 415/DAR/62/2016 dated 02.05.2016 both issued by the 2nd respondent and the order No.C415/Misc./Dev/DAR/2016 dated 26.08.2016 issued by the 3rd respondent as being illegal, arbitrary, unconstitutional and contrary to the principles of natural justice, mala fide."

3. Since common issues and grounds raised in both the Writ Petitions, the same are taken up together for final disposal.

4. The petitioners are the employees of the Southern Railway. They were charge sheeted on 28.3.2016 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short, 'the Rules') for certain alleged acts of misconduct. The charges relating to an incident that took place on 22.3.2016.

5. In pursuance of the charge memorandum, an inquiry was initiated against the petitioners. Initially, on receipt of the charge memorandum, a request was made by the petitioners for furnishing the copies of the documents which were listed as Annexure III to the charge memorandum. In response to the said request, all the documents as sought for, were furnished along with the covering letter dated 12.4.2016. However, having not satisfied with the furnishing of the documents listed in Annexure III to the charge memorandum, another letter was issued on behalf of the petitioners on 22.4.2016 demanding for furnishing of three more documents on the ground that those documents were essential for them to prove their innocence. However, since the additional documents demanded by the petitioners were not relevant for the purpose for which they were sought for, the Railway Administration rejected their request vide communication dated 2.5.2016. Against the same, an appeal was filed on 16.5.2016 before the appellate Authority. In response to the appeal, a communication was sent on 25.5.2016 informing the

petitioners that in the departmental proceedings they would be given every opportunity in terms of the Rules and hence, the appeal could not be entertained. Thereafter, an Inquiry Officer was appointed vide communication dated 25.5.2016 and the preliminary inquiry proceedings were also conducted on 12.7.2016.

6. While the matters stood thus, the petitioners approached the Tribunal, challenging the charge memorandum along with the rejection order of the second respondent, refusing to furnish the copies of the additional documents demanded by the petitioners together with the order dated 26.8.2016 directing the petitioners to appear for regular hearing in respect of the charges framed against the petitioner.

7. Before the learned Tribunal, the petitioners contended that the charges framed against them were vague, non-furnishing of the additional documents demanded by them, would vitiate the departmental action. The petitioners further contended that the Inquiry Officer, namely, the 3rd respondent herein would not be in a position to hold an impartial inquiry since the alleged incident had happened in the Chambers of the 4th respondent who is higher in the rank than the Inquiry Officer.

8. A detailed reply statement has been filed on behalf of the Railway Administration, refuting each one of the contentions raised on behalf of the petitioners.

9. The learned Tribunal, after taking note of all the factual and legal submissions, disposed of the original application on 1.11.2016. Initially, it appeared that the Tribunal had granted interim stay of the disciplinary action, but ultimately, after disposal of the O.As., the same came to be vacated. The learned Tribunal, while disposing of the Original Applications, ordered for a common inquiry. Pending adjudication of the original applications, out of additional three documents sought for by the petitioners, two had already been filed by way of Annexure to the reply statement and the learned counsel appearing for the Railway Administration has also submitted that he was prepared to give even the 3rd document sought for by the petitioners. The result of the disposal of the O.As. was that the contention put forth on behalf of the petitioners was not accepted by the learned Tribunal and also held that the additional documents demanded by the petitioners were actually

not relevant. In any event, the same were made available to the petitioners and therefore, no prejudice would be caused to their case if the departmental inquiry is allowed to be completed expeditiously. All the contentions raised by the petitioners did not find acceptance and the learned Tribunal has eventually directed the Railway Administration to complete the enqiry. As against the orders passed by the learned Tribunal, the present Writ Petitions have been filed.

10. Mr.R.Muthukumarasamy, learned Senior counsel appearing for the petitioners, reiterated the submissions on the grounds raised in the Original Applications. He strenuously contended that the charges levelled against the petitioners were vague and therefore, the charge memorandum is invalid. As regards legal contention of non-furnishing of the additional documents is concerned, that ground was nevertheless not available to them since all the documents were already furnished and the 3rd document had also undertaken to that effect. The learned senior counsel would draw out attention to the Chapter IX which deals with the role and functions of the Inquiry Committee/Inquiry Officer in disciplinary proceedings, wherein para 902 envisages who should be appointed as Inquiry Officer and clause (vi) of 902 is relevant which is extracted as under:

"902 (iv) The principles of natural justice imply "fair hearing", "unbiased judgment" and "clear speaking order". It, therefore, follows that the person to be appointed as Inquiry Officer, should be higher in status to that of the officer who conducted the fact finding inquiry. This will eliminate the possibility of the Inquiry Officer being influenced by the findings of the superior officer."

11. Relying on the above, learned senior counsel would contend that the fact finding inquiry was conducted by the General Manager and the Inquiry Officer if lower in the rank, cannot be accepted to have a dispassionate view or conduct an impartial inquiry and therefore, the principle of natural justice of fair hearing is violated and therefore, the entire disciplinary action has to be set aside.

12. Per contra, Mr.R.Thiagarajan, learned senior counsel appearing for Southern Railway, contended that the legal submissions made on behalf of the petitioners have no sound basis and the same are made only on the basis of mere apprehension. Learned senior counsel further contended that the fact finding

inquiry was conducted much after the issuance of the charge sheet and therefore, the same was not the basis of any action taken against the petitioners. In that view of the matter, according to the learned senior counsel, fact finding inquiry report was not a relevant document as far as the case of the petitioners was concerned. In fact, the learned senior counsel also drawn our attention to para 19 of the counter affidavit filed on behalf of the respondents 1 to 3 which stated that the charge memorandum, dated 28.3.2016 was issued prior to the conduct of the inquiry by the General Manager on 31.3.2016 and 1.4.2016 and the report of the General Manager was only to the Deputy Commissioner of Police and that has no relevance to the charge memorandum. Learned senior counsel therefore impressed upon this Court that no case has been made out for stalling the inquiry proceedings and whatever objections the petitioners could have, the same can always be agitated in the inquiry proceedings.

13. Heard the learned senior counsel for the parties and perused the relevant materials available on record.

14. As regards the first contention raised on behalf of the petitioners that the charges are vague, the same cannot be countenanced both on law and facts since it has to be seen that vagueness or otherwise of any charge memo has to be seen from the perception of the charge sheeted employee. In the instant case, the petitioners were fully aware of what transpired on 22.3.2016 and in response to the imputations, a detailed representation has been addressed to the General Secretary, All India Railway Men's Federation, New Delhi vide letter dated 17.5.2016. From the contents of the representation, it could be seen that the petitioners were aware of what happened on that day and raising the contention of vagueness of charges, was only to avoid facing the charge memorandum and inquiry in terms of the disciplinary rules. As regards the other contention that the inquiry officer being subordinate to the authority who had conducted the fact finding inquiry, as stated supra, as the fact finding inquiry had nothing to do with the issuance of charge memorandum as admittedly, it was issued prior to the conduct of the inquiry. Even according to the Railway Administration, the fact finding inquiry report has no relevance to the disciplinary action initiated against the petitioners. As regards the bias objection against the inquiry officer, it has to be

noted that the foundation of the bias objection was that three additional documents which were sought for by the petitioners were not supplied. Of course, the petitioners had raised other allegations against the disciplinary authority and the inquiry officer, but those allegations do not take the place of fact atleast at the present stage. The additional documents having now been given, the plea of bias against the inquiry officer cannot be sustained as of now. It is always open to the petitioners to urge whatever grounds available to them in the departmental inquiry. This Court, at the preliminary stage, need not go into those allegations. This Court exercising judicial review under Article 226 of the Constitution, cannot be called upon to give a finding on the allegations and counter allegations by the parties. In any event, the petitioners interest does not suffer from any prejudice since they would be given all the opportunities in the departmental proceedings, since all safeguards are available for the employees under the Rules.

15. The learned Tribunal therefore, was right in disposing of the original applications with a direction to the Railway Administration to expeditiously complete the common inquiry initiated against the petitioners. We do not find anything wrong in the final conclusion of the learned Tribunal and we also do not think that the petitioners have made out a case for our interference at this preliminary stage.

16. In the above circumstances, we do not find any merit in the contentions raised on behalf of the petitioners and no infirmity could be found in the final order passed by the Tribunal.

Accordingly, the Writ Petitions are dismissed as devoid of merits and substance. Consequently, connected WMPs are closed.

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