

Tribunal Application
Judgement on- 29.4.2010
W.P.S.T. 183 of 2010.

Points:

Disciplinary proceeding: Court finds that the main charge is not established- Major punishment based on other charges whether permissible – Service Law

Facts:

A departmental proceeding was initiated against the respondent on the ground of unauthorised absent from duty, suppression of material fact before the authority and involvement in a criminal case under Section 147/325/307 of the Indian Penal Code read with Section 25 (1)/27(b) of the Arms Act.

The said request was not considered by the disciplinary authority. Thereafter the respondent/applicant filed an application before the learned Tribunal and the said learned Tribunal on the earlier occasion directed the D.I.G., Midnapore Range to take a decision .The D. I. G., Midnapore Range, however, upheld the order of dismissal passed earlier by the disciplinary authority.

Challenging the said order of the D.I.G., Midnapoire Range, the respondent/applicant filed another application before the learned Tribunal. The learned Tribunal, however, held that the respondent/applicant is liable to be penalised on the ground of other charges viz., unauthorised absence and for suppression of material fact.

Held:

The learned Tribunal specifically held that the order of dismissal cannot be sustained in the facts of the present case since the main charge levelled against the petitioner regarding involvement in the criminal case could not be established. However, the respondent/applicant is liable to be penalised on the ground of other charges viz., unauthorised absence and for suppression of material fact and, therefore, the learned Tribunal granted liberty to the authority concerned to impose any other punishment in accordance with the Rules. There is no error and/or infirmity in the impugned decision of the learned Tribunal.

Para-8 to 10

Ms. Rina Banerjee.
...For the Petitioners.
Mr. Prasanta Kr. Pakrashi,
Mr. Debasis Sur.
...For the Respondents.

The Court:

This writ petition has been filed challenging the order dated 15th December, 2009 passed by the learned West Bengal Administrative Tribunal in case number O.A.6647 of 2007 whereby and where under the said learned Tribunal finally decided the application filed by the respondent herein.

2. From the records we find that a departmental proceeding was initiated against the respondent on the ground of unauthorised absent from duty, suppression of material fact before the authority and involvement in a criminal case under Section 147/325/307 of the Indian Penal Code read with Section 25 (1)/27(b) of the Arms Act.

3. It is not in dispute that the aforesaid criminal case was tried by the competent Court of law and the petitioner was held not guilty in respect of the charges mentioned in the said criminal case.

4. The disciplinary authority, however, on the basis of the findings of the enquiry officer dismissed the respondent/applicant from service. After the order of acquittal passed by the competent Criminal Court, the respondent/applicant requested the disciplinary authority for reconsideration of the order of punishment issued earlier by the said disciplinary authority.

5. Unfortunately, the said request was not considered by the disciplinary authority. Thereafter the respondent/applicant filed an application before the learned Tribunal and the said learned Tribunal on the earlier occasion directed the D.I.G., Midnapore Range to take a decision with regard to the punishment already imposed upon the petitioner after examination of the judgment of the Criminal Court passed in the criminal case in respect of the petitioner. The D. I. G., Midnapore Range, however, upheld the order of dismissal passed earlier by the disciplinary authority.

6. Challenging the said order of the D.I.G., Midnapore Range, the respondent/applicant filed another application before the learned Tribunal which has been finally decided by the impugned judgment and order dated 15th December, 2009 passed by the learned Tribunal.

7. The learned Tribunal considered the judgment of the Criminal Court and following the decisions of the Hon'ble Supreme Court specifically held that the enquiry officer in a most mechanical manner supported the charge which has been totally demolished by the judgment passed by a competent Criminal Court.

8. The learned Tribunal specifically held that the order of dismissal cannot be sustained in the facts of the present case since the main charge levelled against the petitioner regarding involvement in the criminal case could not be established.

9. The learned Tribunal, however, held that the respondent/applicant is liable to be penalised on the ground of other charges viz., unauthorised absence and for suppression of material fact and, therefore, the learned Tribunal granted liberty to the authority concerned to impose any other punishment in accordance with the Rules.

10. On examination of the impugned judgment and order passed by the learned Tribunal, we find that the said learned Tribunal considered the issues raised before it strictly in accordance with law and specially upon considering the principles of law already settled by the Hon'ble Supreme Court.

We do not find any error and/or infirmity in the impugned decision of the learned Tribunal and ,therefore, we refuse to interfere with the impugned judgment and order passed by the learned Tribunal.

In the aforesaid circumstances, this writ petition stands dismissed as we do not find any merit in the same.

In the facts of the present case, there will be, however, no order as to costs.

(Pranab Kumar Chattopadhyay, J.)

(Pranab Kumar Deb, J.)