UNION OF INDIA AND ORS. A

v.

SHARVAN KUMAR

(Civil Appeal Nos. 1942 of 2014)

JULY 06, 2022 B

[DINESH MAHESHWARI AND KRISHNA MURARI, JJ.]

Service Law – High Court held that the remitted proceedings in the disciplinary enquiry against the respondent were rendered nullity, for having not been concluded within the time limit fixed by the Tribunal in its earlier order dated 03.09.2010 – Correctness of – Held: Fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005 – However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry – Proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010 – There was no reason or justification for the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013 which inter alia *held that the proceedings pursuant to the order dated 03.09.2010 would have abated only if it was so directed in specific terms and not otherwise – Impugned order set aside and the order dated 21.06.2013 passed by the Tribunal is restored.* C D E F

Service Law – Conditional orders passed by Court/Tribunal to do something within a particular period, without providing consequence of default – Enlargement of such time – Permissibility of – Discussed.

Partly allowing the appeal, the Court G

HELD: 1.1 Neither the approach of the High Court nor its conclusion could be endorsed. The propositions of the High Court, treating the proceedings in question as having abated or having been rendered nullity cannot be approved from any standpoint. H

A **It appears that the High Court has taken the period of two months for completion of the proceedings, as stated in the order of the Tribunal dated 03.09.2010, to be an inflexible mandate as also of fatal consequence in the manner that after its expiry, the department could not have taken the disciplinary proceedings to their logical conclusion. This approach of the High Court cannot** B **be supported even from a technical standpoint and obviously stands at conflict with the substance of the matter. After the respondent was awarded the penalty of removal from service by the order dated 23.02.2006 in conclusion of the disciplinary proceedings, he challenged the same and the Appellate Authority,** C **by its order dated 23.08.2006, altered the penalty to that of downgrading his pay. The Revisional Authority by its order dated 14.03.2007 held that the negligence on the part of the respondent was established and found no reason to interfere. However, the Tribunal, in the earlier round of litigation, while dealing with OA** D **No. 373 of 2007, chose not to examine the other material questions involved in the matter but, disapproved the imposition of penalty on the respondent for the reason that the person acting as the Disciplinary Authority had been one of the members who had earlier submitted the joint enquiry report. In this view of the matter, the Tribunal quashed the orders passed against the** E **respondent but, being conscious of the fact that the disciplinary proceedings were otherwise required to be taken to the logical conclusion, issued directions to ensure that the matter be dealt with by the Disciplinary Authority other than the person who had been a member of the joint enquiry team and the proceedings be taken up from the stage of consideration of representation of the** F **respondent against the report of the Enquiry Officer. While concluding on the matter, the Tribunal also expected that such afresh exercise be completed within two months of the receipt of the order, after leaving all other contentions open. As noticed, the appellants attempted to seek enlargement of time in view of** G **the fact that the exercise could not be completed within the said period of two months but, this prayer for enlargement was declined by the Tribunal not on its merits but, for a different reason that the particulars like the time-frame laid down by the Railway Board for taking the decision on the enquiry report was not stated before it. The said order expecting conclusion of the proceedings within**

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two months from the date of receipt of copy of the order was passed on 03.09.2010; the application seeking enlargement was dismissed on 03.01.2011; and the Disciplinary Authority passed its order on 17.02.2011. Thus, the question was about the status of such order so passed by the Disciplinary Authority beyond the period fixed by the Tribunal which had not been enlarged. The Tribunal in its order dated 21.06.2013 held that the proceedings pursuant to the order dated 03.09.2010 would have abated only if it was so directed in specific terms and not otherwise. The Tribunal had been correct in this approach and the High Court has unjustifiably interfered with the just and proper order passed by the Tribunal. [Paras 7-9][457-F-H; 458-A-H; 459-A]

1.2 Fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005. However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry. It remains trite that if an Adjudicating Authority in exercise of its jurisdiction could grant or fix a time period to do a particular thing, in the absence of a specific statutory provision to the contrary, the jurisdiction to fix such a time period inhers the jurisdiction to extend the time initially fixed. Such conditional orders have regularly been construed by this Court to be *in terrorem* so as to put a check on the dilatory tactics by any litigant or to guard against any laxity on the part of the Adjucating Authority but, the Court is not powerless to enlarge the time even though it had peremptorily fixed the period at any earlier stage. When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry

of the time fixed. In the present case, even the order dismissing the application for enlargement of time on a technical ground of not placing before the Tribunal instructions of the Railway Board, had again been not of giving any such status of mandatory and rigid character to the period originally fixed that the proceedings would have abated. [Paras 9.1-9.3][459-B-D, F-H; 460-A-B]

Mahanth Ram Das v. Ganga Das **[1961] 3 SCR 763 – relied on.**

1.3 While treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the disciplinary proceedings with its expiry. Moreover, when no consequence of default was stated in the order dated 03.09.2010, the period as stated therein was only of expectations and not of mandate. Very many times, such fixing of time period causes more complications and harm rather than serving the cause of justice. Fixing of such period could only be justified if there are strong and compelling reasons for the same; and if at all such period is proposed to be fixed, not only the reasons for the same but, even the consequences of default are also required to be stated if such period is, for any valid reason, expected to operate with adverse consequences on the defaulter. The proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010. There was no reason or justification for the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013, which deserves to be restored with necessary consequential directions. [Paras 10-11][460-B-F]

1.4 The impugned order dated 30.08.2013 is set aside and the order dated 21.06.2013 passed by the Tribunal is restored. Resultantly, it would be permissible for the respondent to prefer an appeal against the order dated 17.02.2011 before the Appellate Authority. Before concluding, one more aspect is required to be

dealt with; it relates to the payment of 50% back wages to the respondent and furnishing of security of immoveable property by him in terms of the order passed by this Court on 14.08.2015. It is informed that such payment has been made and the respondent has received the same while furnishing the requisite security. Having regard to the totality of circumstances, the said order dated 14.08.2015 is made absolute. However, the security furnished by the respondent stands discharged. [Paras 13, 14][461-B-C, E-F]

Case Law Reference

[1961] 3 SCR 763	**relied on**	**Para 9.1**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1942 of 2014.

From the Judgment and Order dated 30.08.2013 of the High Court of Calcutta in WPCT No. 330 of 2013.

Ms. Aishwarya Bhati, ASG, Ms. Shreya Jain, Ms. Vimla Sinha, Amrish Kumar, Advs. for the Appellants.

Shree Pal Singh, Adv. for the Respondent.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

1. By way of this appeal, the appellants - Union of India and its officers related with South Eastern Railway – have challenged the judgment and order dated 30.08.2013 passed by the High Court of Calcutta in WPCT No. 330 of 2013, whereby the High Court has disapproved the order dated 21.06.2013 passed by the Central Administrative Tribunal, Calcutta Bench ('the Tribunal') in OA No. 293 of 2011 and has also held that the remitted proceedings in the disciplinary enquiry against the respondent were rendered nullity, for having not been concluded within the time limit fixed by the Tribunal in its earlier order dated 03.09.2010.

1.1. In view of its findings and conclusion, the High Court has disposed of the writ petition filed by the respondent with directions to the appellants to reinstate him in service and to pay him 50% back wages from the date of removal from service i.e., 17.02.2011 and until the date of reinstatement.

A 2. Having regard to the circumstances of the case and the issues arising for consideration in this appeal, all the factual aspects and merits of the charges in the disciplinary proceedings need not be dilated upon. Only a brief reference to the relevant background aspects would suffice.

2.1. It has been the case of appellants that on 09.11.2005, the B respondent, an Electric Locomotive Driver, while piloting a locomotive engine, overshot the signal and thereby, endangered the property and operation of railways as also the life of citizens. As per railway manual, a joint enquiry was conducted in regard to the incident in question and it was found that it had been a matter of averted collision, due to the locomotive not being controlled; and that the brake adjustment rods were C allegedly manipulated by the respondent-driver and his co- driver, in an attempt to justify their stand that the engine could not be controlled due to the poor power of brakes. Based on the enquiry report, a major penalty charge-sheet bearing No. RS/ACC/6/2005/SK/MJ dated 06.12.2005 was issued to the respondent.

D 2.2. After the enquiry proceedings, the Disciplinary Authority, having examined the record and the findings of the Enquiry Officer, ultimately served the respondent with the punishment notice dated 23.02.2006, imposing the penalty of removal from railway service with immediate effect.

E 2.3. The respondent preferred an appeal before the Appellate Authority against the aforesaid punishment notice dated 23.02.2006 wherein, after considering the assurances given by the respondent to remain more careful in the future, the Appellate Authority, by its order dated 23.08.2006, modified the penalty to that of downgrading his pay to F the lowest stage in the scale of Rs. 4,000-6,000/-.

2.4. The respondent preferred a revision petition against the order so passed by the Appellate Authority but the Revisional Authority, by its order dated 14.03.2007, declined to interfere while observing that as per technical review, nothing was wrong with the brakes of the locomotive; G and that the respondent had encountered several down-gradients successfully and fading of brakes could not occur abruptly.

2.5. The respondent, thereafter, filed OA No. 373 of 2007 before the Tribunal, challenging the orders passed against him and seeking reinstatement with all benefits. The Tribunal decided the OA so filed by the respondent by its order dated 03.09.2010. H

2.5.1. Though the Tribunal noted the questions involved in the matter as to whether the report of the Commissioner, Railway Safety/Joint Enquiry could hold somebody guilty or their role was only to ascertain systemic defects so as to prevent recurrence in future; and as to whether such report could be accepted in evidence without examining the authors? The Tribunal, however, observed that these questions were not required to be answered and proceeded to hold that the proceedings suffered from illegality and impropriety in view of the fact that one of the members who had submitted the joint enquiry report, Shri A. Sadasiva, was the same person who had also issued major penalty charge-sheet and then, imposed the penalty in his capacity as the Disciplinary Authority. The Tribunal also noticed that this objection was duly taken by the respondent in his representation but, the Appellate Authority and the Revisional Authority did not consider the same.

2.5.2. Accordingly, the Tribunal set aside the orders passed against the respondent but, provided for the proceedings afresh in the following words: -

> "10. The orders passed by the Disciplinary Authority Appellate Authority & Revisional Authority are quashed and set aside. In case the same Disciplinary Authority continues an ad-hoc Disciplinary Authority shall be appointed. The Disciplinary Authority shall proceed from the stage of consideration or (*sic*) representation against the report of Enquiry Officer uninfluenced by the earlier decisions. This exercise be completed within two months of receipt of order. All other contentions are left open. No costs."

2.6. After the directions aforesaid, the matter was taken up for reconsideration but, the Disciplinary Authority required additional time to complete the proceedings, and hence, an application seeking enlargement of time for deciding the case was filed before the Tribunal, being Miscellaneous Application No. 436 of 2010. However, this application was dismissed by the Tribunal on 03.01.2011, essentially for the reason that the same was lacking in material particulars like the timeframe laid down by the Railway Board for taking a decision on the Enquiry Report.

2.7. Thereafter, the Disciplinary Authority passed its order on 17.02.2011, once again imposing the major penalty of removal from

railway service on the respondent, while concluding that the respondent did not stop the engine on time due to his negligence. It was also mentioned in the order of the Disciplinary Authority that the respondent could prefer an appeal before the Appellate Authority within 45 days from the date of receipt of a copy of the order.

2.8. The respondent did not challenge the order so passed by the Disciplinary Authority on 17.02.2011 in appeal. Instead, he moved the Tribunal and filed OA No. 293 of 2011 with the contention, *inter alia*, that the Tribunal had stipulated a time limit of two months to complete the proceedings by its order dated 03.09.2010 and the proceedings had abated for having not been completed within the prescribed time limit.

2.8.1. The Tribunal, after hearing the parties, dismissed the OA so filed by the respondent by its order dated 21.06.2013 while holding that the proceedings would have abated only if it were so directed in specific terms. The Tribunal found that in the instant case, while directing that respondent's case be decided within two months, it had not been specifically provided that the proceedings would abate if not completed within two months. It was also noted that the respondent had not preferred an appeal against the order dated 17.02.2011, and two years had already elapsed. However, in the interest of justice, it was directed that if the respondent were to file an appeal against the order dated 17.02.2011, the Appellate Authority would consider and decide the same within a period of one month in accordance with law. The Tribunal referred to a decision of its Full Bench and observed, *inter alia*, as under: -

> "8. Further it has been observed by the Tri- bunal by inserting the reference that it is only when in an order a specific direction of abating of the proceedings not completed within a spe- cific time limit the proceedings abates but not otherwise. It is clear that in the earlier O.A. time limited was given but not specifically provided that the proceedings will abate if not done within the stipulated time frame. Considering the observation made above, since the applicant has also not preferred the appeal against the order dated 17.2.2011. However, more than two years have already elapsed but considering the interest of justice we deem it appropriate to issue a di- rection to the applicant that in case he prefers an appeal against the order dated 17.2.2011 the appellate authority shall consider and decide the same within the next period of one month

in accordance with law and the decision so taken be communicated to the applicant.

9. However, in regard to considering the prayer of the applicant is concerned we are not inclined to interfere in the same. As such, the O.A. is dismissed, no orders as to costs."

3. The aforesaid order dated 21.06.2013 as passed by the Tribunal in OA No. 293 of 2011 was challenged in WPCT No. 330 of 2013, which has been considered and allowed by the High Court by way of the impugned order dated 30.08.2013.

3.1. The High Court has taken the view that the Disciplinary Authority had no jurisdiction or authority to complete the proceedings beyond the period prescribed by the Tribunal. The High Court has observed that even though Miscellaneous Application No. 436 of 2010, seeking enlargement of time was dismissed by the Tribunal on 03.01.2011, the Disciplinary Authority proceeded with the matter; and such proceedings beyond the time prescribed were nullity in the eyes of law. It has further been held that once the proceedings were held to be a nullity, there could be no question of preferring a statutory appeal, and such proceedings could only be challenged before a Court of law. The relevant observations and reasoning of the High Court read as under: -

"….Since the authorities concerned failed to complete the disciplinary proceedings in terms of the earlier order passed by the learned Tribunal, an application was filed on behalf of the respondents before the said learned Tribunal for extension of time and the said application was numbered as M.A. 436 of 2010. The learned Tribunal, however, dismissed the aforesaid application on 3rd January, 2011. Even though the learned Tribunal by the specific order dated 3rd January, 2011 passed in M.A. 436 of 2010 refused to extend the time limit for completion of the disciplinary proceedings in respect of the petitioner herein, the Disciplinary Authority in an illegal manner proceeded with the disciplinary proceedings and passed the order of punishment removing the said petitioner from Railway service.

The Disciplinary Authority namely, Sri A.K. Mukherjee, Sr. Divisional Electrical Engineer (OP), S.E. Railway, Adra refused to show any respect to the solemn order passed by the learned Tribunal and in a most illegal manner, passed the order of

A punishment in respect of the petitioner herein by conducting the disciplinary proceedings even after expiry of the prescribed time limit fixed by the learned Tribunal.

The petitioner herein, however, challenged the aforesaid order of dismissal before the learned Tribunal by filing another B application being O.A. 293 of 2011. The learned Tribunal, unfortunately, failed to appreciate that the order passed by the Disciplinary Authority was nullity in the eye of law since the said Disciplinary Authority conducted the disciplinary proceedings in respect of the petitioner herein after the expiry of the prescribed time limit fixed by the said learned Tribunal.

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When a proceeding is nullity in the eye of law, question of preferring any statutory appeal before the Appellate Authority cannot and does not arise and the same can be directly challenged before any court of law. The learned Tribunal, most unfortunately, dismissed the application filed by the petitioner herein on the ground D that no appeal was preferred before the Appellate Authority without realizing the fact that the order passed by the Disciplinary Authority was nullity in the eye of law since the final order of punishment was passed by the Disciplinary Authority after expiry of the prescribed time limit fixed by the learned Tribunal.

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The impugned order passed by the Disciplinary Authority dated 17th February, 2011 cannot be sustained in the eye of law since the Disciplinary Authority had no authority and/or jurisdiction to conduct and complete the disciplinary proceedings beyond the prescribed time limit.

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The learned Tribunal, in our opinion, should not have dismissed the writ petition for not preferring any appeal before the Appellate Authority since the order passed by the Disciplinary Authority was nullity in the eye of law…."

3.2. For the aforesaid reasons, the High Court set aside the order G of the Tribunal dated 21.06.2013 and also quashed the order dated 17.02.2011 passed by the Disciplinary Authority as being illegal, invalid and nullity in the eyes of law. The High Court even proceeded to make adverse observation against the officer who had acted as the Disciplinary Authority; and proceeded to order reinstatement of the respondent with 50% of back wages from the date of removal from service, i.e., H

17.02.2011 and until the date of reinstatement. The High Court observed and directed as under: -

> "For the aforementioned reasons, the impugned order passed by the Disciplinary Authority dated 17th February, 2011 stands quashed being illegal, invalid and nullity in the eye of law.
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> For the identical reasons, the impugned order passed by the learned Tribunal cannot be sustained and the same is, therefore, set aside. We do not approve the conduct of Sri A. K. Mukherjee, Sr. Divisional Electrical Engineer (OP), S.E. Railway, Adra and Disciplinary Authority since the said Disciplinary Authority did not show any respect to the solemn order passed by the learned Tribunal and we record our strong displeasure in this regard. We hope the superior authority will take note of our displeasure in respect of the aforesaid conduct of the Disciplinary Authority for not showing proper respect to the solemn order passed by the learned Tribunal.
>
> Since the disciplinary proceedings initiated on the basis of the charge-sheet could not be completed within the prescribed time limit, the same stood automatically quashed.
>
> The respondent authorities are directed to reinstate the petitioner in service forthwith. We are also of the opinion that justice will be done in the facts of the present case if 50% of the back wages is paid to the petitioner herein.
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> The respondent authorities are, therefore, directed to pay 50% of the back wages to the petitioner herein from the date of removal of the said petitioner herein from the date of removal of the said petitioner from service i.e. with effect from 17th February, 2011 till the date of reinstatement of the said petitioner in service in terms of this order. The respondent authorities are also directed to calculate the aforesaid back wages within three weeks from date and disburse the same to the petitioner herein within a period two weeks thereafter positively."

4. The appellants have challenged the judgement and order so passed by the High Court by way of this appeal.

4.1. It may be pointed out that in this matter, leave to appeal was granted by this Court on the very first date of consideration i.e., 07.02.2014

A and, having regard to the circumstances of the case, this Court stayed the operation of all the judgments passed in this matter. Thereafter, by an order dated 14.08.2015, this Court directed the appellants to deposit 50% back wages in terms of the directions of the High Court and provided that the respondent would be entitled to withdraw the same against the security of immoveable property. We are informed that such payment has indeed been made and the respondent has received the same while furnishing the requisite security.

5. The learned Additional Solicitor General appearing for the appellants has submitted that the High Court was not justified in upsetting and reversing the well- considered order of the Tribunal dated 21.06.2013, which did not suffer from any infirmity.

5.1. The learned ASG has referred to the charges against the respondent and the findings recorded against him that he did not stop the locomotive before the danger starter and advance starter, which directly endangered the safety of railway operations. The learned ASG would submit that the High Court has proceeded merely on technical grounds while ignoring the gravity of charges in this case.

5.2. The learned ASG has further submitted that the Tribunal in its order dated 21.06.2013 had rightly held that even if time limit was set earlier for conclusion of the disciplinary proceedings, the said proceedings did not abate, if not finalised within the time limit fixed by the Tribunal because no such directions were contained in the earlier order requiring completion of the proceedings within two months. According to the learned ASG, the order passed in the earlier round by the Tribunal having not signified that the proceedings would come to an end after expiry of two months, the view of the High Court in treating the proceedings as nullity remains unjustified.

5.3. The learned ASG has further submitted that the Tribunal in its order dated 21.06.2013 had also taken note of the fact that the respondent had not preferred the statutory appeal and even while dismissing the OA, reserved such liberty for the respondent. Hence, there was no reason for the High Court to interfere with the justified order of the Tribunal.

5.4. We may observe in the passing that the learned ASG also attempted to refer to the merits of the case and to support the findings of the Disciplinary Authority but, we do not consider it necessary to enter into the merits of case, for the same having not formed the subject of

consideration of the Tribunal in its order dated 21.06.2013 and of the High Court in its impugned order dated 30.08.2013.

6. While countering the submissions made on behalf of the appellants, learned counsel for the respondent has duly supported the order impugned and has submitted that in the given set of facts and circumstances, no case for interference is made out.

6.1. Learned counsel for the respondent has strenuously argued that in view of the mandate of the previous order of the Tribunal dated 03.09.2010, the Disciplinary Authority was duty bound to decide the matter within two months and it having failed to do so and then, even the application seeking extension of time having been dismissed by the Tribunal on 03.01.2011, the Disciplinary Authority could not have continued with the matter. Hence, according to the learned counsel, the order passed by the Disciplinary Authority on 17.02.2011 is a nullity in the eyes of law, for the stipulated period of time, as provided for by the Tribunal, having expired and no extension having been granted.

6.2. The learned counsel has submitted that Courts and Tribunals have inherent powers to prescribe time limits to conduct proceedings and any such prescription remains binding on the authority conducting the proceedings. According to the learned counsel, if such directions are not properly and punctually complied with, the proceedings would come to an end with the expiry of the time fixed by the Court or the Tribunal. Thus, learned counsel would contend, the view taken by the High Court remains justified and calls for no interference.

7. Having given thoughtful consideration to the rival submissions and having examined the record, we are clearly of the view that neither the approach of the High Court nor its conclusion could be endorsed. In other words, the propositions of the High Court, treating the proceedings in question as having abated or having been rendered nullity cannot be approved from any standpoint.

8. It appears that the High Court has taken the period of two months for completion of the proceedings, as stated in the order of the Tribunal dated 03.09.2010, to be an inflexible mandate as also of fatal consequence in the manner that after its expiry, the department could not have taken the disciplinary proceedings to their logical conclusion. This approach of the High Court cannot be supported even from a

technical standpoint and obviously stands at conflict with the substance of the matter.

9. As noticed, after the respondent was awarded the penalty of removal from service by the order dated 23.02.2006 in conclusion of the disciplinary proceedings, he challenged the same and the Appellate Authority, by its order dated 23.08.2006, altered the penalty to that of downgrading his pay. The Revisional Authority by its order dated 14.03.2007 held that the negligence on the part of the respondent was established and found no reason to interfere. However, the Tribunal, in the earlier round of litigation, while dealing with OA No. 373 of 2007, chose not to examine the other material questions involved in the matter but, disapproved the imposition of penalty on the respondent for the reason that the person acting as the Disciplinary Authority had been one of the members who had earlier submitted the joint enquiry report. In this view of the matter, the Tribunal quashed the orders passed against the respondent but, being conscious of the fact that the disciplinary proceedings were otherwise required to be taken to the logical conclusion, issued directions to ensure that the matter be dealt with by the Disciplinary Authority other than the person who had been a member of the joint enquiry team and the proceedings be taken up from the stage of consideration of representation of the respondent against the report of the Enquiry Officer. While concluding on the matter, the Tribunal also expected that such afresh exercise be completed within two months of the receipt of the order, after leaving all other contentions open. As noticed, the appellants attempted to seek enlargement of time in view of the fact that the exercise could not be completed within the said period of two months but, this prayer for enlargement was declined by the Tribunal not on its merits but, for a different reason that the particulars like the time-frame laid down by the Railway Board for taking the decision on the enquiry report was not stated before it. The said order expecting conclusion of the proceedings within two months from the date of receipt of copy of the order was passed on 03.09.2010; the application seeking enlargement was dismissed on 03.01.2011; and the Disciplinary Authority passed its order on 17.02.2011. Thus, the question was about the status of such order so passed by the Disciplinary Authority beyond the period fixed by the Tribunal which had not been enlarged. The Tribunal in its order dated 21.06.2013 held that the proceedings pursuant to the order dated 03.09.2010 would have abated only if it was so directed in specific terms and not otherwise. The Tribunal had been correct in this approach

and, in our view, the High Court has unjustifiably interfered with the just and proper order passed by the Tribunal.

9.1. It needs hardly any elaboration to say that fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005. However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry. It remains trite that if an Adjudicating Authority in exercise of its jurisdiction could grant or fix a time period to do a particular thing, in the absence of a specific statutory provision to the contrary, the jurisdiction to fix such a time period inhers the jurisdiction to extend the time initially fixed. Such conditional orders have regularly been construed by this Court to be *in terrorem* so as to put a check on the dilatory tactics by any litigant or to guard against any laxity on the part of the Adjucating Authority but, the Court is not powerless to enlarge the time even though it had peremptorily fixed the period at any earlier stage. In the case of *Mahanth Ram Das v. Ganga Das:* (1961) 3 SCR 763, this Court examined the peremptory order of the Court fixing the period of payment of deficit court fees in the backdrop of the fact that the application for extension of time came up for hearing only after the time fixed by the Court had expired and the application was rejected. This Court put the things in perspective while observing, *inter alia*, as under: -

> "5…Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed…"

9.2. We may elaborate a little. When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry of the time fixed.

A 9.3. In the present case, even the order dismissing the application for enlargement of time on a technical ground of not placing before the Tribunal instructions of the Railway Board, had again been not of giving any such status of mandatory and rigid character to the period originally fixed that the proceedings would have abated.

B 10. We are impelled to observe that while treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the C disciplinary proceedings with its expiry.

10.1. Moreover, when no consequence of default was stated in the order dated 03.09.2010, the period as stated therein was only of expectations and not of mandate. We may also observe that very many times, such fixing of time period causes more complications and harm D rather than serving the cause of justice. Fixing of such period could only be justified if there are strong and compelling reasons for the same; and if at all such period is proposed to be fixed, not only the reasons for the same but, even the consequences of default are also required to be stated if such period is, for any valid reason, expected to operate with E adverse consequences on the defaulter.

11. The upshot of the discussion foregoing is that the proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010. There was no reason or justification for F the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013, which deserves to be restored with necessary consequential directions.

12. Before concluding, we also deem it necessary to observe that the High Court in the impugned order proceeded to pass unnecessary G strictures against the Disciplinary Authority who had passed the order dated 17.02.2011. As noticed, the displeasure as expressed by the High Court has itself been founded on a wrong premise where the High Court assumed that the proceedings were rendered nullity and as if the Disciplinary Authority could not have touched the same at all after expiry of the expected period of time. We are clearly of the view that even if H

the High Court were to proceed on the premise that the proceedings should not have continued, there was no justification to observe that the Disciplinary Authority had been disrespectful towards the judicial process. In any case, when the order impugned is not being approved, such observations/strictures shall also stand annulled. A

13. Accordingly, and in view of the above, the impugned order dated 30.08.2013 is set aside and the order dated 21.06.2013 passed by the Tribunal is restored. B

13.1. Resultantly, it would be permissible for the respondent to prefer an appeal against the order dated 17.02.2011 before the Appellate Authority. Having regard to the circumstances of the case and the background, we deem it appropriate to provide that if the respondent files such an appeal within 30 days from the date of receipt of a copy of this order, the same shall be considered by the Appellate Authority on merits, but strictly in accordance with law and without being influenced by any observations occurring in any of the orders passed by the Tribunal or by the High Court or for that matter, any observations occurring in the present judgment. All the contentions of the parties are, therefore, left open to be examined by the Appellate Authority on merits, who would also be expected to deal with the appeal expeditiously and while assigning the same a priority for consideration. C D

14. Before concluding, one more aspect is required to be dealt with; it relates to the payment of 50% back wages to the respondent and furnishing of security of immoveable property by him in terms of the order passed by this Court on 14.08.2015. We are informed that such payment has been made and the respondent has received the same while furnishing the requisite security. Having regard to the totality of circumstances, the said order dated 14.08.2015 is made absolute. However, the security furnished by the respondent stands discharged. E F

15. The appeal stands allowed to the extent and in the manner indicated above. No order as to costs. Pending applications also stand disposed of. G

Divya Pandey and Anurag Bhaskar Appeal partly allowed.
(Assisted by : Shivani Pundir, LCRA)