

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7609 OF 2012
(SPECIAL LEAVE PETITION (C.) NO. 19519 OF 2012)

UNION OF INDIA & ORS.

... APPELLANTS

VERSUS

OM PRAKASH YADAV

... RESPONDENT

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the Division Bench of the Calcutta High Court in F.M.A.No.1337 of 2009, dated 25.8.2011. By the impugned judgment and order, the High Court, while directing the Disciplinary Authority to consider the reply/representation that may be filed by the respondent herein to the second Show Cause Notice issued, has directed the Disciplinary Authority not to pass any order which would affect the pensionary benefits of the respondent.

3. The respondent was the petitioner before the High Court. He had called in question the correctness or otherwise of the charge-sheet, the report of the Enquiry Officer, as well as the second show cause notice issued by the Disciplinary Authority, without filing any objections/reply to the second Show Cause Notice. Learned Single Judge had allowed the Writ Petition and had quashed the enquiry proceedings initiated by the Disciplinary Authority.

4. The Union of India had carried the matter further by filing an appeal against the judgment and order passed by the learned Single Judge. The Division Bench, though, accepts all the contentions canvassed by the appellant(s) before it, in our opinion, very strangely directs the Disciplinary Authority not to pass any order which would affect the pensionary benefits of the respondent. In our view, by passing such an order, the High Court has literally stepped into the shoes of the Disciplinary Authority, which is impermissible. It needs to be mentioned, that, the High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of the appellate court/ authority. It is settled law that imposition of punishment is within the power and discretion of the disciplinary authority. It is not necessary to refer to the decisions on this topic.

5. Therefore, while allowing the appeal filed by the Union of India, we set aside that portion of the order passed by the Division Bench of the High Court, wherein, it had stated that "any order passed by the Disciplinary Authority should not affect the pensionary benefits of the respondent."

6. We permit the respondent to file his objections/ reply, if any, to the second Show Cause Notice within 15 days time from today. If such objections/ reply is filed within the time granted, the Disciplinary Authority shall consider the same and pass appropriate orders in accordance with law, as expeditiously as possible, at any

rate, within a month's time from the date of receipt of the objections/ reply.

Ordered accordingly.

NEW DELHI;
OCTOBER 17, 2012.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)



JUDGMENT