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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/00064/2017.

Date of order : This the 28th Day of January, 2020.

Hon'ble Mrs.Bidisha Banerjee, Judicial Member

Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative Member



Ashis Kumar Sarkar
Son of Late Nirendra Kumar Sarkar
Aged about 60 years, worked as Booking Supervisor-I,
Eastern Railway, Howrah Division,
Howrah, residing at Matrilok,
Bally Durgapur, P.O. Durgapur,
P.S. Nischinda, District Howrah
Pin 711205.

.....Applicant

- Versus -

1. Union of India, through the General Manager,
Eastern Railway, 17, N.S.Road,
Fairly Place, Kolkata – 700001.
2. The Divisional Railway Manager,
Eastern Railway, Howrah Division,
Howrah, Pin 711101.
3. Senior Divisional Commercial Manager,
Eastern Railway, Howrah Division,
Howrah, Pin 711101.
4. Senior Divisional Personnel Officer,
Eastern Railway, Howrah Division,
Howrah, Pin 711101.
5. The Additional Divisional Railway Manager,
Eastern Railway, Howrah Division,
Howrah – 711101.

.....Respondents

Advocate for the Applicant : Mr T.K.Biswas
Mr A.Chakraborty.

Advocate for the Respondents : Ms T.P. Sinha.

ORDER (ORAL)

MS BIDISHAL BANERJEE, MEMBER(J)

Heard learned counsel for both sides. This O.A has been preferred by the applicant to seek the following reliefs :



- a) An order directing the respondents to quash/set aside the order dated 1.7.2015 (Annexure A-2) Memorandum dated 15.10.2015 (Annexure A-6) and order dated 27.10.2015 (Annexure A-8) and order dated 16.12.2016 (Annexure A-11) and thereafter restore the basic pay, grade pay, seniority and any other service benefits which was enjoying before punishment and after that re-calculate the retirement benefits and same may be released along with interest and also releases the all consequential benefits;
- b) An order directing the respondents to produce all relevant records of the case which are related to the present case;
- c) Any other order or orders and further orders as to this Hon'ble Tribunal may deem fit and proper."

2. RBE 22/2009 requires the appellate authorities to issue speaking orders giving reasons therefor. The extract of R.B.E 22/2009 being as under :

"91) Speaking Orders:- The orders passed by the appellate authority must be speaking orders. The appellate authority should apply its mind to the records of the case and should then pass speaking order giving reasons therefor. The orders of the appellate authority which are cryptic and without brief reasons, are liable to be set aside by the court of law. [R.B. No.E(D&A)2008 RG-6/41 dated 6.2.2009. (R.B.E. No. 22/2009)]"

3. At hearing we noticed that the order passed by the appellate authority on 16.12.2016, on the appeal dated 02.09.2016, simply records the following :

"I have gone through the enquiry report and the statement/appeal of the CO. The charges have been proven in the enquiry finding which are of serious in nature.

Under such circumstances I have decided that the existing punishment shall hold good and remain as it is.

(R.Srivastava)
Appellate Authority &
Addl. Divisional Railway Manager
Eastern Railway/Howrah"

Rule 22 (2) of Railway Servants (D & AR) Rules 1968 is reproduced below :

"22. Consideration of appeal –

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

Provided that –

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;

(iv) subject to the provisions of Rule 14, the appellate authority shall –

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of



the provisions contained in sub-rule (2) of Rule 11; and

- (b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and
- (v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty."

4. Since inarguably and irrefutably it is a cryptic order which does not reflect any application of mind to the records as required in RBE 22/2009 or RS (D&A) Rules, nor give any reason for conclusion, we quash the order with liberty to the appellate authority to issue a reasoned and speaking order in accordance with Rule 22 (2) of RS(D&A) Rules 1968.

It is made clear that we are not entering into the merits of the application, therefore all points are kept open for consideration.

5. O.A is allowed to the extent indicated. No order as to costs.


(DR (MS) NANDITA CHATTERJEE)
MEMBER (A)


(BIDISHA BANERJEE)
MEMBER (J)