

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A. 1387 of 2019

M.A. 842 of 2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Pintu Moulick,
Son of Moulick,
Permanent resident of Bongaon Station Road,
Railway Quarter No. 181/B,
Post Offices and P.S. – Bongaon,
District – North 24 PGS – 700 109.

..... Applicant.

Versus

1. Union of India
through the General Manager,
Eastern Railway,
Fairlie Place,
Kolkata, Pin Code – 700 001.
2. The Sr. Assistant Engineer/South,
Eastern Railway,
Sealdah – 700 014.
3. Mr. J.K. Sengupta,
Retd. Dy. FA & CAO/F&B/ER –Cum-Inquiry Officer,
Of Flat No. A/5, Srijan Apartment' MIG-8,
Nilganj Road, Sodepur, Sealdah,
Kolkata – 700 014.
4. Mohammad Imran Raza,
Presenting Officer,
Eastern Railway,
Kolkata – 700 014.

..... Respondents.

For the applicant : Mr. A. Chakraborty, Counsel

For the respondents : Mr. A. Ganguly, Counsel

Reserved on : 04.12.2019

Date of Order : 19.12.19



ORDER

Per : Bidisha Banerjee, Judicial Member

Assailing a charge sheet, issued on 13.10.18 by Sr. ABN/South Eastern Railway, the applicant preferred O.A. 916/18 to seek the following reliefs:

- "A) Charge Memorandum being No.SDA/VIG/MJ1028 dated 13.10.2018 issued against the undersigned by the Sr. Assistant Engineer/South, Eastern Railway, Sealdah is not tenable in the eye of law and as such the same may be quashed.
- B) Costs and Incidentals.
- C) Such further Oder/Orders and/or direction/directions as your lordships deem fit and proper."

2. This Tribunal while dealing with O.A. 916/18, noticed that the representations dated 18.6.2019 was preferred to seek the following documents:

- "1) The authenticated copy of fake appointment letter issued by Sri Pintu Moulick the charged official by which the allegations has been framed.*
- 2. The name and designation of the issuing authority along with the Signatory Authority of the alleged vendor Panel List for Group-D Employment.*
- 3. The authenticated documents presence of alleged Animek Hazra during the working period of charged official.*
- 4. The authority letter for framing the charges, based upon an anonymous undated and unsigned letter by which the charges has been framed."*

And the representation dated 22.5.19 was preferred whereby it was alleged that:

"(i) "that your authority has already expressed your mind towards establishing the charges"

(ii) *the authority issuing the charge-sheet notice cannot, confront him with definite conclusion of his alleged guilt.*

(iii) *although it seems the charges to be the outcome of the complaint of the said one Animek Hazra or his father Amitava Hazra, the said relevant document e.g. the complaint letter has not been listed in the list of relied upon the documents "which vitiates the entire Disciplinary proceeding."*

3. This Tribunal ordered as follows:

"6. Having heard the rival contentions and having perused the materials on record and legal provisions, we are of the concerned opinion that in the interest of justice the letters dated 11.5.19 A/2 and 18.6.19 A/3 (being not disposed of as yet) ought to be examined, considered and disposed of by the competent authority and documents (additional) as are found relevant be provided within 4 weeks of receipt of the copy of this order, and before the next date of enquiry.

7. In the event, the D.A is of the opinion that details have to be furnished in accordance with law, the same shall be furnished within 4 weeks as specified thereafter, the applicant shall be permitted to prefer his representation within a further period of 2 weeks, which if preferred shall be disposed of within 2 weeks thereafter, in which case the proceedings shall remain stayed until disposal of the representation.

8. This O.A accordingly stands disposed of. No costs."

4. We note that even before disposing of the representations in terms of the order of this Tribunal the Presenting Officer prepared and submitted the Presenting Brief on 16.8.2019 stating as under,

"Submission of P.O:-

6.1 During the total inquiry proceedings, natural justice has fully been provided to the Charged Official by the IO.

The authenticity, relevancy and proper accountability of all the Prosecution Exhibits have been well established during the examination of prosecution witnesses by the presenting officer and cross-examination by the CO/DH during the inquiry.

6.2 On the basis of oral and documentary evidences produced before the enquiry board and what it has been explained here above, it is submitted before the respected I.O. that the article of charges has undoubtedly been proved from the depositions of the P.W as well as from the documents produced. C.O. is responsible for the violation of sub-rule (i), (iii), and (xviii) of Rule-3.1 of the Railway Service Conduct Rules, 1966.

Hence the Charges brought against the C.O. are substantiated beyond any doubt."



Even the I.O. on 20.9.2019 i.e. before disposing of representation in terms of our order, included the enquiry the submitted his enquiry report with the conclusion as under:

"Conclusion

Thus, after due analysis and close examination of the evidences produced before the inquiry as detailed in the proceeding paragraphs, I have come to the conclusion without prejudice in accordance with natural justice to the CO that charge(s) brought against Sri Pintu Moulick, erstwhile Gatekeeper at Gate No.43 at Thakurnagar Station, now posted as Track Maintainer – II working under SSE/P, Way/BRP/E.Rly/SDAH as per charge memorandum no. SDA/VIG/MJ/1028 dated 13-10-2018 issued by Sr. Assistant Engineer (South)/E.Railway/Sealdah, is proved."

The said report is under challenge in the present O.A.

5. M.A. 842/19 has been filed to seek the following reliefs:

"In the circumstances aforesaid, your applicant most humbly prays that Your Lordships would graciously be pleased to pass a further order staying all the proceeding in connection with impugned Charge Memorandum being No. SDA/VIG/MJ/1028 dated 13.10.2018 issued against the applicant and thereby setting aside the Speaking Order being No. E/8/South dated 18.10.2019 issued by The Sr. Assistant Engineer/South, Eastern Railway, Sealdah and to pass such other or further order or Orders as your Lordship may deem fit and proper."

6. We would further discern that the speaking order dated 18.10.2019 does not disclose any application of mind on the representation dated 22.05.2019. It simply deals with the representation dated 18.06.2019. Therefore the decision in earlier O.A. has not been implemented in true letter and spirit.

7. The speaking order Presenting Brief, IO's report being thus, issued in blatant and deliberate violation. of the order passed in O.A. 916 of 2019, are set aside and quashed.

8. Consequently the DA is directed to first dispose of the representations dated 18.06.2019, 22.05.2019, in terms of the order dated 22.07.2019 as in earlier O.A., within 4 weeks from the date of receipt of a copy of this order, either

withdraw the charge memo if found vague, and issue a fresh charge sheet, or provide copies documents as are found relevant; justify irrelevancy of the other documents, conclude the proceedings in accordance with law and within a period of 6 months from the date of receipt of this order issue a final order in the proceedings, which shall accordingly govern the fate of the applicant.

9. Accordingly, the O.A. and M.A stand allowed. No costs.


(Dr. N. Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

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