

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**LIBRARY**

No. O.A. 350/00853/2020

Date of order: 11.11.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dipak Kumar Mandal,
Son of late JyotilalMandal,
Residing at Vill- Agaibari,
Police Station- Raghunathpur,
District- Purulia, Pin- 723 133.

.....Applicant.

-versus-

1. Union of India, service through the Secretary,
Ministry of Railway,
Government of India,
having its office at Rail Bhavan,
New Delhi- 110001.
2. The South Eastern,
Head quarters,
Service through the General Manager,
Garden Reach,
Kolkata.
3. The Divisional Railway Manager,
South Eastern Railway,
Adra Division,
Having his office at Adra,
District- Purulia, Pin- 723 101.
4. The Disciplinary Authority & SR. DIVL. SIG. & TELE.
Engineer,
having his office at Adra,
District- Purulia, Pin- 723 101.
5. The Senior Divisional Personnel Officer,
South Eastern Railway,
Adra Division,
Having his office at Adra,
District- Purulia, Pin- 723 101.
6. The Assistant Personnel Officer- II,
South Eastern Railway,
Adra Division,

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having his office at Adra,
District- Purulia, Pin- 723 101.

.....Respondents.

For the Applicant : Mr. S. Banerjee, Counsel
Mr. G. Chakraborty, Counsel

For the Respondents : Mr. A. Mitra, Counsel

ORDER (Oral)

The applicant has approached this Tribunal under Section 19 of the
Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) A direction do issue upon the respondent authorities concerned to forthwith rescind/withdraw/quash and/or cancel the impugned show cause notice dated May 1, 2020, Disciplinary Order dated June 25/26, 2020 and the termination order dated July 20, 2020, and all orders relating to the termination of service of the applicant.

(b) A direction do issue upon the respondent authorities to forthwith consider and dispose of the departmental appeal dated August 10, 2020 so received by hand on August 24, 2020 in the light of the Judgements and orders passed by the Hon'ble Tribunal, the Hon'ble High Court, Calcutta and the Hon'ble Apex Court in similar cases.

(c) A direction do issue upon the respondent authorities concerned to forthwith re-instate the applicant in the service of the South-Eastern Railway as Sr. Tech(Tele)/DMA with effect from July, 14, 2020 along with all arrears and other service benefits.

(d) An order do issue directing the respondent authorities concerned to produce all the relevant records pertaining to the instant matter.

(e) Costs and incidentals too.

(f) And to pass any other order or orders and/or direction or directions as this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined documents on record. This matter is taken up for disposal at the admission stage.

3. Ld. Counsel for the applicant would submit that the applicant had joined the respondent authorities on February 24, 1989 on temporary basis. He became a permanent employee from February 19, 1990, and, thereafter, moved up his career ladder on promotion till he was finally promoted to the post of Jr. Engineer.(Tele) in L-6 grade. The applicant,

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however, came to be falsely implicated in his personal capacity in a criminal case under Sections 326/307/34 of the Indian Penal Code, 1860, and, that, he was finally convicted in such case by a judgment and Order dated November 29, 2019 (Annexure A-1 to the O.A.).

That, the applicant thereafter approached the Hon'ble High Court at Calcutta which was pleased to suspend his sentence and the applicant was finally released on bail on 8.8.2020. His conviction, however, was not overruled.

During his detention in custody, the applicant was issued with a show-cause notice dated May 1, 2020 to which he failed to reply on account of his custodial detention. The respondent authorities upon the presumption that he had nothing to state in his defence thereof, terminated him from his service. As the applicant was not given any opportunity of hearing prior to imposition of such major penalty, he has approached this Tribunal praying for the aforementioned relief.

The applicant had also preferred an appeal dated 10.8.2020 against the penalty order dated 1.5.2020 (Annexure A-7 and A-3 to the O.A. respectively), and, that, the said appeal was not considered by the appellate authority despite the fact that the applicant was denied natural justice in the course of the disciplinary proceedings..

Ld. Counsel for the applicant would submit that the applicant be permitted to prefer a comprehensive appeal to the appellate authority.

4. As, Ld. Counsel for the respondents does not contradict the fact that said appeal is indeed pending with the appellate authorities, we would grant the applicant permission to prefer such comprehensive

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representation duly supported by rules and applicable judicial decisions, within two weeks of the date of receipt of a copy of this order.

Further in the event such representation is so received, we would direct the competent appellate authority to decide on the appeal ~~at~~ Annexure A-7 to the O.A., in accordance with law. The said authority shall thereafter, convey his decision in the form of a reasoned and speaking order to the applicant.

We have not entered into the merits of the matter and ~~the~~ respondents are at liberty to decide in accordance with law.

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP