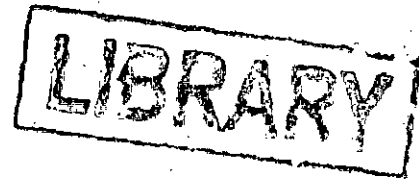


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/00453/2020

Date of order: 8.7.2020

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

Tapan Haldar,
Son of Gopal Haldar,
Aged about 43 years,
Working as Office Superintendent
Under SSE/PW/ED/BLF of AEN/II/SDAH,
Permanent resident of Uttar Taldi,
Village and P.O. – Taldi,
P.S. – Canning,
South 24-PGS, Pin Code – 743376.

..... Applicant.

Versus

1. Union of India,
Service through the General Manager,
Eastern Railway,
Fairlie Place,
Kolkata – 700001.
2. The Senor Divisional Engineer/I,
Eastern Railway,
Sealdah Division,
Sealdah,
Kolkata – 700014.
3. Mr. S.K. Sinha,
Assistant Engineer/TMC cum Enquiry Authority,
Eastern Railway,
Sealdah Division,
Sealdah,
Kolkata – 700014.

..... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. Kashinath Bhattacharyya, Counsel



ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

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

"(a) Charge Memorandum dated being No. SDEN/I/CON/SDAH/CES/20/MP (TH) dated 16.01.2020 issued by the respondent no. 2 is not tenable in the eyes of law and as such the same may be quashed.

(b) An Order do issue directing the respondents to grant sufficient time and thereby to extend the opportunity to pursue course and obtain educational qualification certificate from a recognized institution/board at an earliest along with grant of all consequential benefits and also to allow the applicant to continue with his service in the post of Office Superintendent all under the authority of respondents.

(c) Costs and Incidentals

(d) Such further Order or Orders and direction or directions as Your Lordships may deem fit and proper."



2. The applicant's submissions, as advocated through his Ld. Counsel is that, the applicant, who had joined Railway Service in a Gr. "D" post, was promoted to the post of Clerk Gr. II in 1999, as Sr. Clerk in 2009, and, thereafter, as Office Superintendent in 2013.

The applicant had obtained his educational qualification of "10th pass" from one Mahatma Gandhi Secondary & Sr. Secondary Education, Delhi. The respondent authorities, however, upon verification of the authenticity of the institution which had issued his certificate of "10th pass", issued him a show-cause notice on 26.8.2019, consequent to which he was served with a charge memorandum to which the applicant replied denying all alleged charges.

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An enquiry was set up, whereby the initial regular hearing was fixed on 16.3.2020, further rescheduled on 2.4.2020 and he was further asked to appear on 6.5.2020. The applicant represented in detail on 12.5.2020 praying for supply of certain necessary documents as relevant to the enquiry despite which to separate office orders dated 15.5.2020 and 22.5.2020 were issued asking him to attend the enquiry on 12.6.2020. The applicant further represented on 9.6.2020, pleading that an opportunity be given to him to engage a defence helper and that he should also be allowed sufficient time as he was constrained on account of the COVID 19 pandemic and consequent lockdown. The respondent authorities, despite such prayers of the applicant dated 9.6.2020 and 12.6.2020, issued another office order on 19.6.2020 stating that the applicant had failed to attend the hearing on 19.6.2020 and that he had neither responded nor attended, despite communication of the hearing notice. The said order further said that the applicant had to attend the hearing on 30.6.2020, failing which exparte decision will be taken by the enquiry officer. Ld. Counsel would aver that such exparte proceedings was indeed conducted on 30.6.2020, much to the detriment of the applicant.



Ld. Counsel for the applicant, would, therefore, urge that the respondent authorities should be directed to take into consideration the applicant's prayers for obtaining the requisite and relevant documents, the applicant be given the opportunity to engage a defence helper and also to postpone such enquiry till the easing of the lock-down situation when the applicant would be able to make the requisite arrangements within an extended time period.

3. Upon perusal of the records, we detect from Annexure A-3 to the O.A., however, that in their Office Order dated 19.6.2020, the respondent authorities have referred to the applicant's representations dated 14.3.2020, 12.5.2020 and 21.5.2020 and also to his appeals as received on 9.6.2020 and

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10.6.2020. Further, while directing him to attend the enquiry on 27.5.2020, the respondent authorities have clarified that the RUDs have been served to him and, in order to obtain additional documents, the applicant has to attend the enquiry proceedings.

It is not understood, however, as to whether the respondent authorities have specifically responded to the applicant's prayer for extension of time to attend the hearing given that the applicant had sought an opportunity to engage a defence helper after easing of the lockdown situation.

4. The Office Order dated 19.6.2020, in spite of referring to his many appeals has remained silent on any decision on his prayer for extension of time. Principle of natural justice would require that the applicant's prayers for extension of time, given the extant pandemic|lockdown situation ought to have been dealt with reasoned pragmatism which is not evident in the orders of the authorities. Hence, in the interest of justice, and, taking into account the situation created on account the prevailing pandemic which may for all practical purpose, stand in the way of applicant's engaging a defence helper and also in attending regular hearings on account of restrictions on travel , we are of the considered view that the applicant should have been given further time by the respondent authorities to attend regular hearings consequent to their chargememo dated 16.1.2020.

5. Accordingly, we deem it fit to stay the notice dated 19.6.2020 (Annexure 3 to the O.A.) as well as further enquiry proceedings, and, we direct the respondent authorities to consider the representation/appeal of the applicant received on 9.6.2020 and 10.6.2020 and to allow him sufficient opportunity to engage a defence helper and also to allow him to attend enquiries by extending the date of next hearing by eight weeks from the date of this order. The applicant is directed to attend such enquiry, whenever



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fixed, and to submit his defence duly supported by factual details and legal provisions.

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

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

