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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, KOLKATA.

O.A. No. 350/ 745 of 2020

O.A. No. 350/ 537/ 2020

In the matter of:

S.N.

6 Pintu Moulick, son of ^ Moulick,
permanent resident of Bongaon
Station Road, Railway Quarter No.
181/B, Post Office and P.S.-Bongaon,
District-North 24 PGS-700109.

... Applicant/Petitioner.

-Versus-

1. Union of India through the General
Manager, Eastern Railway, Fairlie
Place, Kolkata, Pin Code- 700001.
2. The Sr. Divisional Engineer-II,
Eastern Railway, Sealdah, Kolkata-
700014.
3. The Sr. Assistant Engineer/ South,
Eastern Railway, Sealdah, Kolkata-
700014.
4. 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-700014.
5. The Assistant Engineer/Baruipur,
Eastern Railway, Sealdah-700014

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.350/745/2020
O.A.350/537/2020

Date of order : 2.2.2021.

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**PINTU MOULICK
VS.
UNION OF INDIA & OTHERS
(S.E. Railway)**

For the applicant : Mr. Arpa Chakraborty, counsel

For the Respondents : Mr. P. Bajpayee, counsel



ORDER

Bidisha Banerjee, Judicial Member

In O.A.350/745/2020 the applicant has sought for the following

reliefs:-

"A) Punishment Order being No.SDA/VIG/MJ/028 dated 14.09.2020 along with the Speaking Order dated 14.09.2018 issued by respondent No.2 is not tenable in the eye of law and as such the same may be quashed;

B) Costs and Incidentals;

C) Such Further Order/Orders and/or direction/directions as your lordships deem fit and proper."

2. O.A.350/537/2020 has been preferred to seek the following

reliefs:-

"A) Charge Memorandum being No.SDA/VIG/MJ/1028 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;

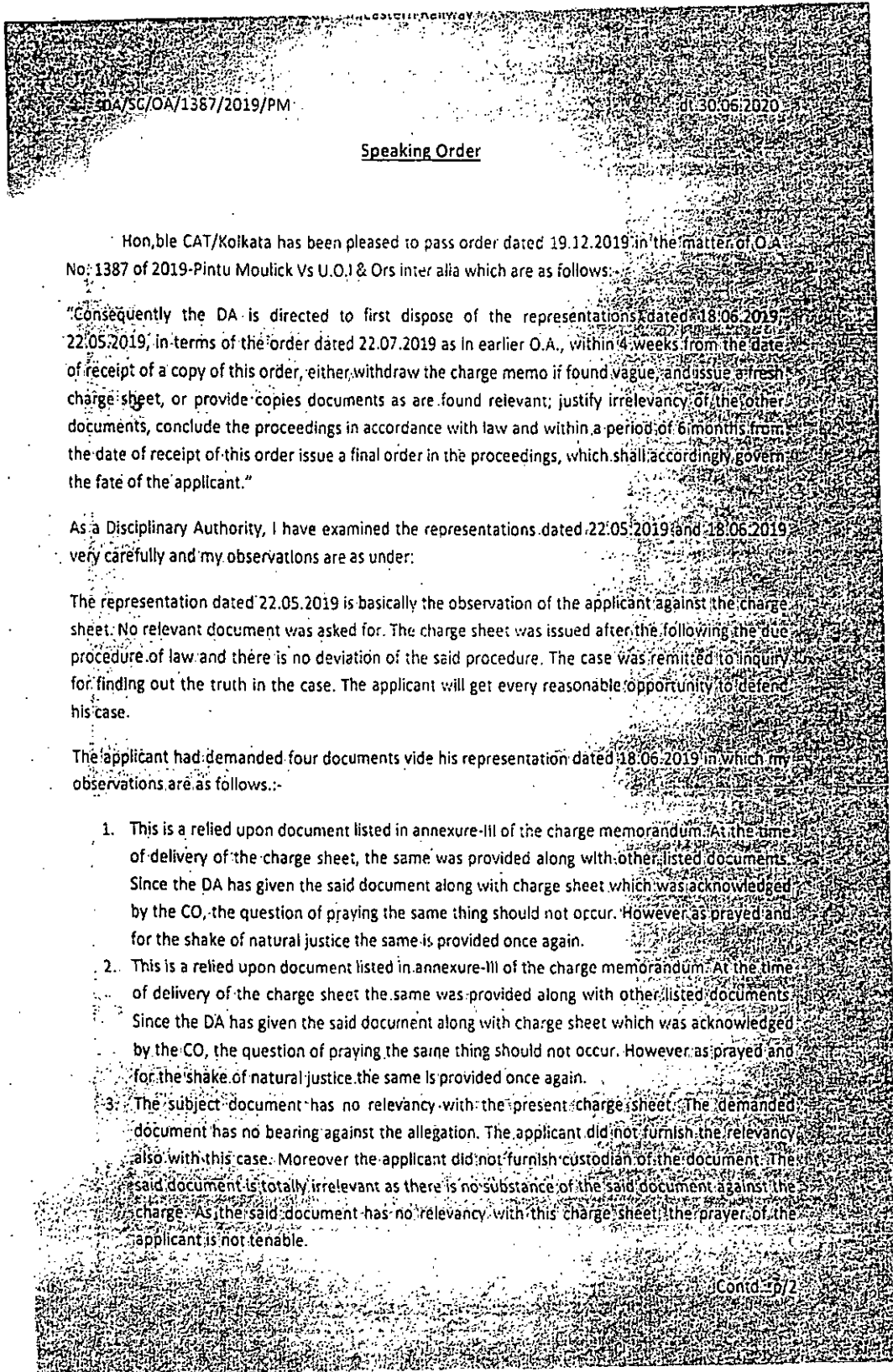
B) The Office Order dated being No.SDA/SC/OA/1387/2019/PM dated 30.06.2020 issued by AEN/BRP/Eastern Railway/Sealdah not tenable in the eye of law and as such same may be quashed;

C) Costs and Incidentals;

B

D) Such further Order/Orders and/or direction/directions as your lordships deem fit and proper."

3. In O.A.350/537/2020 the speaking order dated 30.06.2020 which is a subject matter of challenge in the present O.A. is extracted hereunder:-



BB

[2]

It is totally irrelevant in respect of the charge memorandum. The allegation against the applicant is very specific and the prayed document has no bearing with the allegation. The fact finding report is classified confidential document and cannot be disclosed from the Vigilance point of view. The outcome of the fact finding are mentioned in the allegations of the charge sheet.

This is without any prejudice.

Thus the above observation disposes of the order dated 19.12.2019 passed by Hon'ble CAT/Kolkata in the matter of O.A. No. 1387 of 2019-Pintu Maulick Vs U. O. I. & Ors.

[Signature]
AEN/BRP/SDAH
& Jt. Secy
Respondent No.2

The said speaking order was issued in consideration of the representation whereby the applicant had sought for 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."

Since the authority namely, the AEN has given the reasons while disposing of the representation dated 18.06.2019, no infirmity was found in the said speaking order.

4. At hearing, Id. counsel for the applicant would vociferously contend that although the representation dated 22.05.2019 was a detailed one running into several pages, the said authority while issuing the speaking order has simply stated that the applicant would get every reasonable opportunity to defend his case. By way of the said



representation dated 22.05.2019 the applicant had alleged that the action of the respondent authorities stood vitiated in terms of the decision in **State of Punjab vs. V.K.Khanna & Others** reported in (2001)

2 SCC 330. The applicant had alleged that :-

"V.....the charges contained in the Charge-memorandum are non-specific, vague, equivocal, ambivalent and indefinite charges. That the Hon'ble Apex Court in the case of State of U.P-Versus-Mohammed Sharif reported in (1982)2 SCC 374 had been pleased to hold that charge sheet was vague and the employee was prejudiced in the matter of his defence.

*VI. That the entire charges had been framed on the basis of suspicion owing to some uncommunicated complaint by one incumbent claiming to be the victim of racket but the undersigned cannot be dealt with since such suspicion has got no role to play in the instant matter. The Hon'ble Apex Court in **Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors.[1999(7) SCC 409]**, has categorically held:-*

"Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter."

The applicant had asked for copies of complaints of Animek Hazra, Amitava Hazra in connection with levelling of charges,13.10.2018:

5. In O.A.350/745/2020 which the applicant has preferred against a speaking order dated 14.09.2018 and punishment order dated 14.09.2020, the Id. counsel for the applicant would draw our attention to a communication dated 14.09.2020 issued by the Disciplinary Authority which reads as under:-

*"After considering the enquiry report with its findings in respect of said enquiry report in the matter of Major Penalty Memorandum No.SDA/VIG/MJ/1028 Dt.13.10.2018 issued to Sri Pintu Moulick, erstwhile Gatekeeper at Gate No.43 at Thakurnagar, now posted as TM-II under SSE/PW/BRP of AEN/BRP/SDAH and on careful examination of the whole case and Enquiry Report & observation of AEN/BRP/SDAH, I am convinced that Sri Pintu Moulick, erstwhile Gatekeeper at Gate No.43 at Thakurpukur, now posted as TM-II under SSE/PW/BRP of AEN/BRP/SDAH is guilty. Therefore I decided to impose following punishment. Sri Pintu Moulick, erstwhile Gatekeeper at Gate No.43 at Thakurnagar, now posted as TM-II under SE/PW/BRP of AEN/BRP/SDAH is **punished with Removal from service w.e.f. 14.09.2020(A.N.) without Pensionary benefits.***



You are directed to hand over the Railway Property if any in your possession to SSE/PW/BRP, Eastern Railway. It is also mentioned that Railway Quarters if you do not vacate under your possession within 15 days you will make yourself liable to Administration for eviction therefrom.

Being the Disciplinary Authority, I have accepted the enquiry officer's findings. A copy of the findings drawn by the undersigned is also enclosed.

If you wish to make an appeal against the above penalty, you can do so, within a period of 45 days to the Appellate Authority(ADRM/I/SDAH) through proper channel. While doing so, you should keep in view the provision of Sub-Rule(1) &(2) of Rule 21 of R.S.(D&A) Rules, 1968, a copy of which is enclosed as Annexure –"A".

Ld. counsel would submit that the enquiry report and findings which stood quashed in terms of the decision of this Tribunal in O.A.1387 of 2019 was in fact considered by the Disciplinary Authority to impose the penalty. The decision of this Tribunal in O.A.350/1387/2019 is as under:-

"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."

Ld. counsel would, therefore, contend that the order dated 14.09.2020 issued by the Disciplinary Authority deserved to be quashed for ends of justice. He would urge for an order of reinstatement of the applicant to the post he was serving prior to the issuance of penalty order.



6. Ld. counsel for the respondents would vehemently opposed the prayer of reinstatement but very fairly submit that in fact the Disciplinary Authority had failed to interpret the decision and that the penalty order was totally unintentional.

We would note that the respondents have candidly admitted that in their reply, which records the following:-

"22. the text of the order passed in O.A.No.1387 of 2019 was not appropriately discussed with the authority by the concerned Advocate who are dealing with the case and the disciplinary authority was also not aware that the inquiry report has been quashed by the Hon'ble Tribunal. The disciplinary authority could not interpret the order mention in the judgment dated 19.12.2019 at Sl. No.7 & 8. The DA had complied the order at Sl.No.8 of the judgment in course of passing the final order. It was totally unintentional.

23. The authority has all respect and in all issues, the orders of the Hon'ble Tribunal has been complied with, but in the instant case, the case of the authority was not appropriately canvassed, as such the entire issue stood in miscommunication and the order of removal was passed.

It is further stated that the authority has passed the order of removal not with the intent to act in violation of the order passed by the Hon'ble Tribunal.

24. In the aforesaid situation, for the sake of justice, the Hon'ble Tribunal may be pleased to pass an appropriate order so that the seriousness of the offence is not ignored and the authority can continue with the proceeding in accordance with law to unveil the truth of charges levelled against the applicant."

7. We considered the rival contentions. In view of such candid confession on the part of the respondents, as enumerated supra, we quash the order dated 14.09.2020, with liberty to the respondents to act in accordance with law.

8. The O.A. is disposed of. No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

sb

(Bidisha Banerjee)
Judicial Member

