



SA 852/2017

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BEFORE THE LD. CENTRAL ADMINISTRATIVE TRIBUNAL Road.
CALCUTTA BENCH

Nafesh Kumar Agrawal

son of Shri Mahabir Prasad Agrawal,

aged about 56 years, by occupation

service as Deputy Chief Engineer

(Bridge), o/o the Principal Chief

Engineer, Eastern Railway, Fairle

Place, 17, Netaji Subhas Road,

Calcutta 700 001, having residence at

Flat No. 5, Block 18/2, South Eastern

Railway Officers Colony (BNR), 11

Garden Reach Road, Calcutta 700 043

..... Applicant

- Versus -

1. The Union of India, Ministry of
Railways, through the Secretary,
Railway Board, Rail Bhavan, Raisina
Road, New Delhi 110001

-3-

Page 1001

2. The General Manager, Eastern
Railway, 17, Netaji Subhas Road,
Calcutta -700 001

4. Jt Secretary / E-II
Railway Board.
New Delhi

3. The Chief Personnel Officer
Eastern Railway, 17, Netaji Subhash
Road, Calcutta 700 001

Added as respondent Party
by order of the Hon'ble Court
(Mr. A.K. Pattnayak. J.) date
on 20/07/2017

Pabitra Kumar Mandal
Advocate

..... Respondents

[Signature]

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. OA 350/852/2017

Date of order: 29.8.2017 ^{of A.T. Act.}

Present: Hon'ble Mr.A.K.Patnaik, Judicial Member

For the applicant : Mr.S.Samanta, counsel

For the respondents : Mr.S.Banerjee, counsel

O R D E R

Mr.A.K.Patnaik, J.M.

Heard Mr.S.Samanta, Id. Counsel appearing for the applicant and
Mr.S.Banerjee, Id. Counsel appearing for the respondents.

2. This OA has been filed by the applicant under Section 19 of the A.T. Act, 1985 seeking the following relief :

- a) Direction do issue quashing and/or setting aside the impugned notice dated 21.2.2017 under Rule 14(i) of the Railway Services (Discipline & Appeal) Rules, 1968, being Annexure A/10 hereto;
- b) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned notice dated 21.2.2017 under Rule 14(i) of the Railway Services (Discipline & Appeal) Rules, 1968, being Annexure A/10 hereto;
- c) Direction do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders thereon;
- d) Cost and costs incidental hereto;
- e) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper.

3. As per the Id. Counsel for the applicant the sum and substance of the OA is that the applicant joined the Railways as IRSE in 1987. On 28.10.2003 the applicant was implicated by the CBI in a case u/s 7 of the PC Act, 1988 and the applicant was arrested on 29.10.2003. The applicant was placed under suspension due to such arrest but was granted bail in the CBI case. During suspension he was served with a single charge major penalty charge memo on



self same facts as the CBI proceeding. The order of suspension stood revoked after bail.

The OA of the applicant was disposed of by granting the prayer for inspection of documents and filing of reply to the charge memo thereafter. The entire disciplinary proceeding was directed to be completed within a period of 6 months. On failing to complete the enquiry proceedings within 6 months the Railways went on filing MAs for extension of time. In October 2012 the CBI Court convicted the applicant. The criminal appeal before the Hon'ble High Court of Bombay, Nagpur Bench resulted in suspension of the sentence of imprisonment with direction for release on bail pending hearing and disposal of the appeal. The appeal remains pending.

In 2017 over 4 years after the conviction, the impugned notice dated 23.12.2017 is issued for imposing penalty of dismissal from service for conviction of the applicant by a CBI court. The applicant has preferred comprehensive representation which is still pending.

Hence this application.

4. Mr. Samanta submitted that the applicant has already ventilated his grievance by preferring a representation dated 29.3.2017 addressed to the Joint Secretary, Railway Board who is the newly added respondent No.4 and therefore his grievance will be more or less addressed if a specific direction is issued to the respondent No.4 to consider the representation preferred by the applicant on 29.3.2017 (Annexure A/12 to the OA), which is still remaining unanswered and pass appropriate orders within a specific time frame.

5. I do not think it will be prejudicial to either of the sides if such a direction is given and accordingly without entering into the merits of the case, the OA is disposed of at the admission stage by directing the respondent No.4 to consider the representation dated 29.3.2017, if any such representation has been preferred by the applicant and the same is still pending consideration and dispose it of by passing a well reasoned and speaking order and communicate the same to the applicant within 2 months from the date of receipt of this order.

Though I have not expressed any opinion on the merit of the matter and all the points raised in the representation is kept open for the said respondent No.4 to consider the same as per the rules and regulations in force, still then I hereby direct that after such consideration if the applicant's grievance is found to be genuine then expeditious steps may be taken within a further period of 2 months from the date of such consideration to extend those benefits to the applicant.

7. However, I also made it clear that if in the meantime the said representation has already been considered and disposed of, the result be communicated to the applicant within a period of 4 weeks from the date of receipt of this order.

8. Mr.Samanta prayed that till such consideration of the representation dated 29.3.2017, temporary injunction may be granted in favour of the applicant by directing respondent No.2 not to take any further action in pursuance of the notice dated 21.2.2017 under Rule 14(i) of Railway Servants (Discipline & Appeal) Rules, under Annexure A/10 to which Mr.S.Banerjee, Id. Counsel for the Railway respondents made a strong objection by stating that when the OA is being disposed of without entering into merits of the matter and the authorities are directed to consider the representation made by the applicant as per rules, no such interim order should be granted.

9. However, on perusal of the documents I find that challenging the judgment of the CBI Court the applicant has filed a criminal appeal before the Nagpur Bench of Hon'ble Bombay High Court and on being question Mr.Samanta, Id. Counsel for the applicant fairly submitted that the said criminal appeal is still pending adjudication before the Hon'ble Bombay High Court at Nagpur Bench. Therefore while acceding to the objection raised by Mr.S.Banerjee, Id. Counsel for the Railway respondents, still then I hope and trust as the criminal appeal is pending adjudication before Nagpur Bench of Hon'ble Bombay High Court, therefore till the representation under Annexure A/10 is considered and disposed of, the respondents may go slow in initiating any further action as per the notice dated 21.2.2017.

With the aforesaid observation and direction the OA is disposed of at the admission stage itself. No costs.

11. As prayed for by Mr.Samanta, a copy of this order along with the paper book of this OA be transmitted to respondent No.4 by Speed Post for which he will deposit the cost with the Registry within a period of one week. A free copy of this order be handed over to Mr.S.Banerjee, Id. Counsel for the respondents, who is present in the Court today.

(A.K.PATNAIK)
MEMBER (J)

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