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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH
KOLKATA**

OA No. 1049 of 2011

Date of hearing: 27/07/2016
Date of Order : 16/08/2016

Present:

*The Hon'ble Ms. Bidisha Banerjee, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member*

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Shri Subrato Mukherjee, S/o. Late Satya Narayan Mukherjee, aged about 52 years, working as Deputy Chief Commercial Manager/ Data Base/ Passenger Reservation System/ Eastern Railway, Kolkata residing at Flat 201-A, Girikunj 390, S.N.Roy Road, PO. Sahapur, Kolkata-700038.

.....Applicant

-Versus-

1. The Union of India through the General Manager, Eastern Railway, Fairlie Place, Kolkatas-700001.
2. The Secretary, Railway Board, New Delhi-110001.
3. The Member Traffic, Railway Board, New Delhi-110001.
4. The Chief Personnel Officer (Gazetted), Eastern Railway, Fairlie Place, Kolkata-700001.
5. Sri J.N.Jha, SAG, Chief Freight Traffic Manager, South East Central Railway, Bilaspur, Chattisgarh.
6. Narendra Kumar Tuli, SAG Posted on deputation, Indian Railway Catering and Tourist Corporation, 9th floor, Bank Baroda Building, 16, Parliament Street, New Delhi-110001.
7. D.K. Mishra, SAG/ Additional Divisional Railway Manager/N.E. Railway Gorakhpur, Uttar Pradesh.
8. Surajit Kumar Das, Chief Commercial Manager/ PM/PRS, Eastern Railway, 2nd New Koilaghat Building, 14, Strand Road, Kolkata-700001.

.....Respondents

For the Applicant : Mr. A.Chakraborty, Counsel
 For the Respondents : Mr. P.B.Mukhrarjee, Counsel

O R D E R

MS. BIDISHA BANERJEE, JM:

The speaking order dated 10/06/2011 issued by the General Manager, Eastern Railway referring himself as "being the present incumbent in the post of the Accepting Authority" is under challenge in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985. It is seen that the speaking order dated 10/06/2011 has been issued in pursuance of the direction of this Tribunal in OA No. 240 of 2006, as would be evident from the materials on record. The said OA No. 240 of 2006 was disposed of with the following directions:

"19. OA succeeds. The impugned order is quashed. The respondents are directed to communicate the below Bench Mark ACR in the manner of communicating the adverse ACR within one month of the receipt of the order. The applicant shall submit his representation within one further month. The same shall be decided by speaking order. In case the ACR is revised upwards the respondents shall hold a review DPC within one further month. The competent authority shall thereafter take a decision in one further month. Arrears of salary, if payable, shall be paid within two months thereafter failing which interest at 9% will be payable beyond that date to the date of actual payment.

20. OA is disposed of. No order as to costs."

2. In view of the aforesaid direction, it was incumbent upon the authority to get the matter considered by the

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competent authority. It is noted from the ACRs that the General Manager, Eastern Railway, Kolkata is the Accepting Authority of the remarks entered for 01/04/2002 to 31/03/2003. The Reporting Officer has graded as 'Very Good' but both the Reviewing Authority as well as the Accepting Authority have downgraded the grading of the applicant to 'Good' which consequently affected the chances of promotion of the Applicant. The Reviewing Authority being the CAO (C)/SERly/Kol and the Accepting Authority being the General Manager, ER, Kolkata having downgraded the grading given by the Reporting Authority in the ACR of the Applicant, it was incumbent upon the Respondents to place the representation of the applicant before the next higher authority; which in our considered opinion would be the Railway Board; whereas, it is noticed that the matter was again placed before the General Manager, ER, Kol who turned down the representation of the Applicant. Further in regard to APR for 01/04/2000 to 31/03/2001, the GM had acted both as Reviewing Authority as well as the Accepting Authority, as evident from the records when the Reporting Officer graded him "Good" and it was accepted. Therefore, the GM himself could not be the competent authority over the Reviewing Authority to consider the representation against the remarks.

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3. In view of such infirmities in the order, under challenge as power and jurisdiction were wrongly assumed and invoked by the General Manager, ER, Kol, we quash the impugned order dated 10/06/2011 and remit the matter back to the Respondents for placing the representation of the Applicant before the appropriate competent authority to deal with the same in accordance with law. It is also directed that the appropriate competent authority shall consider and dispose of the representation of the Applicant within 02 (two) months from the date of communication of this order.

4. It is made clear that we have not gone into the merit of the matter and all the points are kept open for consideration by the appropriate competent authority, as directed above.

5. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Administrative Member

(Bidisha Banerjee)
Judicial Member