

CENTRAL ADMINISTRATIVE TRIBUNAL  
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O.A No. 1283 of 2016

An application under Section - 19 of  
the Administrative Tribunal Act, 1985.

Nirmalya Chatterjee

S/o Nbakumar Chatterjee, Village-  
Barborisha(Kacharipara), P.O. Kolaghat,  
District- Midnapore(East), West Bengal,  
Pin - 721134.

----- Applicant

- Versus -

1.) Union of India

Service through General Manager,  
South Eastern Railway . 11 , Garden  
Reach Road , Kolkata - 700043 .

2.) General Manager

South Eastern Railway . 11 , Garden  
Reach Road , Kolkata - 700043 .

3.) Chief Personnel Officer

11, Garden Reach Road , Kolkata -  
700043 .

----- Respondents

Nirmalya Chatterjee *Nirmalya Chatterjee*

Present : Hon'ble Mr. A.K. Patnaik, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the Applicant : Mr. Y.N. Gupta, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

O R D E R (Oral)

Per A.K. Patnaik, Judicial Member:

Heard Mr. Y.N. Gupta, Ld. Counsel for the applicant and Mr. B.L. Gangopadhyay, Ld. Counsel for the respondents.

2. Though no notice was issued but we find that reply statement and rejoinder has already been filed. We also cannot close our eyes to Section 20 of the Administrative Tribunal Act, 1985, which reads as under:-

"20. Applications not to be admitted unless other remedies exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

3. The facts in a nut shell is that the applicant is a disabled person suffering with 60% of the cerebral palsy. The Hon'ble High Court of Delhi have passed an order on the 7<sup>th</sup> day of March, 2012 in WP (C) No. 23132 of 2005, in All India Confederation of the Blind-petitioner – versus – Union of

*Y.N. Gupta*

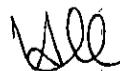
India (Ministry of Railways) – respondents directing the respondent Railway authorities to fill up the backlog vacancies of reserved post of physically handicapped persons. For this purpose an order was passed for special recruitment drive as directed by the Hon'ble High Court of Delhi on 20.1.2009 should be undertaken. The revised schedule would be fixed with two weeks fixing time limit within six months within which all the vacancies in Group A, C and D would be filled up. There had to be strict compliance of the direction in a time bound manner and no laxity or indiscrimination shall be tolerated in this behalf. Further the Hon'ble Court made it clear that since the respondent had already delayed the process the time schedule should be strictly adhered to and no further extension shall be granted. Further the Hon'ble Court had imposed heavy cost on the respondent for Rs. 25,000/- for their inaction on their part. In compliance to the order passed by the Hon'ble Delhi High Court, the Ministry of Railway, Railway Board declared that in Group – C category, 587 number of posts were vacant only in South Eastern Railways for disabled person till the publication of the letter dated 1.5.2012. But till date only 205 disabled persons in total had been given appointment in South Eastern Railway against 587 backlog vacancies till 2012. Hence, it is crystal clear that the South Eastern Railways is reluctant to appoint the disabled persons inspite of the Hon'ble Delhi High Court's order to fulfil all the backlog vacancies. He also submitted that the South Eastern Railways published employment news no. 7 on the 13<sup>th</sup> day of July, 2012 without intimating to any of the Employment Exchange and/or any other statutory body which deals with disabled persons. In total employment category as published in Employment News, there is no room for employment of disabled person with cerebral palsy. As such the Employment News is suffering from gross negligence and very much bad

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for all purpose and occasions and any employment given on the same Employment Notice is void ab-initio and all appointment on the basis of said Employment Notice is also bad and not sustainable in the eye of law and a gross violation of natural justice as well as Hon'ble Delhi High Court's order dated 7.3.2012 has been done knowingly with ulterior motive for illegal gain. Accordingly, this O.A. is filed against the utter inaction on the part of the Respondent authorities which they have done in a most illegal and arbitrary manner by not responding to the representation made by the applicant dated 7.6.2016 followed by Lawyer's notice dated 8.7.2016 given by Advocate, Mr. Yatindra Nath Gupta.

4. Mr. Gupta, Ld. Counsel for the applicant further submitted that by ventilating his grievance, the applicant has preferred a representation to both respondent Nos. 2 and 3 vide his representation dated 7.6.2016 under Annexure "A-7" but till date the applicant has not received any response from the said authorities.

5. The reason behind making the provision in the Section 20 of the A.T. Act, 1985 is to shorten the litigation and to avoid the hardship to the concerned employee by coming to the court as also to save the valuable time of the court. Further the object behind the provisions of Section 20 of the AT Act is that all the remedies provided under the Service Rules should be exhausted, before one seeks redressal of grievance before this Tribunal. The manifest intention of the legislature behind incorporating said provision under the statute rules must be respected and observed. The very fact that the said provisions of Section 20 laid emphasis for exhausting all the remedies unless given its full effect, the provisions of statutory rules would be rendered nugatory. All remedy does not exclude by way of making representation to the higher authority. In the circumstances, it is no more



res integra that the court has the power to dismiss an application for judicial review if the applicant has not first used an internal review by way of availing the opportunity of representation available to the employee concerned. A court may require an applicant to have exhausted their rights of any internal review procedure before bringing an application for judicial review. The court's longstanding view is that an applicant should exhaust all his internal remedies and/or appeal routes within an administrative regime before seeking judicial review. Although there are exceptions to this rule, the most prudent approach is to file a request of reconsideration to the authority before filing an application for judicial review.

6. Accordingly, keeping in mind the well settled position of law that the grievance of a person should be first left to the authorities to be considered. In our considered view, we leave it to the authorities, that if any such representation has been preferred by the applicant on 7.6.2016 and the same is still pending consideration, then the same may be considered by the respondent Nos. 2 & 3 as per the rules and regulations of the Railways in force and the result be communicated by way of a reasoned and speaking order within a period of two months from the date of receipt of this order and if after such consideration the applicant's grievance is found to be genuine, then expeditious steps may be taken within a further period of three months from the date of such consideration to extend those benefits to the applicant.

7. A copy of this order along with paper book be transmitted to the respondent No. 2 & 3 by speed post for which Mr. Y.N. Gupta undertakes to deposit necessary cost within a period of 7 days.

8. With the aforesaid observation and direction, the O.A. is disposed of.

WAC

No costs.

9. It is made clear that we have not expressed any opinion on the merits of the case and all the points raised in the said representation are kept open for consideration by the respondent Nos. 2 & 3 as per rules.

(Jaya Das Gupta)  
Administrative Member

(A.K. Patnaik)  
Judicial Member

SP