

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

MA No. 350/00159/2016
OA No.350/00177/2016
(Disposed of on 24.02.2016)

Dated of order: 30.05.2016

PRESENT:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

SMT. BINITA MITRA
V/S
S.E. RAILWAY & ORS

For the Applicant : Mr.D.Samanta, Counsel
For the Respondents : Mr.B.L.Gangopadhyay, Counsel

ORDER

JUSTICE V.C.GUPTA, JM:

Heard both.

2. The prayer of the applicant in this Miscellaneous Application is as under:

".....to pass orders quashing and/or setting aside the impugned order dated 08.03.2016 of appointment of the Inquiry Officer being Annexure "MA-1" hereto and also to quash and/or set aside that portion of the impugned order dated 29.03.2016 of the Disciplinary Authority, being Annexure "MA-3" hereto, which rejects the prayer of your applicant for being allowed inspection of the selection file from which the RUDs emanate, and direct the said authority to allow inspection of the selection file from which the RUDs emanate within such time frame as may be deemed fit by this Learned Tribunal to enable the applicant to file her written statement of defence to the impugned

charge memorandum within a fortnight thereafter and thereupon directing the Disciplinary Authority to render consideration upon such written statement of defence of the applicant and pass orders in accordance with law either dropping the departmental proceedings or appointing Enquiring Authority for the purpose of proceeding with the departmental proceedings with further directions for filing of reply/rejoinder in the said OA ad to restrain the respondent authorities from acting in any manner or any further manner on the basis of the impugned charge memorandum dated 25.03.2015, being Annexure "A-16" to the OA pending disposal of the original application and/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

(Extracted as such)

3. Before considering the merit of the Miscellaneous Application, few facts of this matter needs to be looked into. The present Applicant (Smt. Binita Mitra) was served with a charge sheet by the competent authority on 25.03.2015. Thereafter, the applicant made a request for inspection of the Recruitment file wherefrom the RUDs were emanated. The applicant was issued with a notice by the railway authorities to inspect the original RUDS on 25.7.2015 in the Vigilance Office of the Railway. In pursuance thereof, records/RUDs were inspected by the Applicant. Thereafter, the applicant sent another letter stating inter alia that if the entire Gr. D selection file is not allowed to her to be inspected, she is unable to make the comprehensive written statement as against the charge sheet issued to her. She wrote another letter dated 25.8.2015 with a similar prayer for inspection of records of Selection to Gr. D post in the railways. The Deputy Chief Personnel Officer informed her vide letter dated 16.9.2015 that all the documents on the basis of which charge sheet has been issued have



been annexed and inspected by the applicant and, therefore, question of providing additional documents, could only be considered by the Inquiry Officer (in short 'IO') in course of enquiry. Similar communications were also made to the applicant on 09.11.2015 and 04.01.2016 wherein the applicant was insisted to file the written statement of defence. Aggrieved by the said communication, OA No. 177 of 2016 was filed by her before this Bench seeking to quash the charge sheet or in alternative to direct the Respondents to allow her to inspect the entire selection file wherefrom the RUDs were emanated. The said OA was dismissed on 24.02.2016 with the following observations:

"Therefore, we are of the view that at this stage, especially when the disciplinary authority has to take the decision regarding the relevancy of the documents no interference is warranted. The applicant may file the detailed reply and also may pray to the disciplinary authority for need of inspection of the documents. The disciplinary authority after considering the same as stated hereinabove may pass a suitable order. But at this stage neither the memo of charge can be set aside nor can the enquiry initiated be dropped. As we do not find any merit in this OA the same is dismissed at this admission stage itself."

4. Aggrieved by this order, the applicant preferred Writ Petition No. WPCT no. 55 of 2016 before the Hon'ble High Court of Calcutta which was heard and disposed of on 16.03.2016. Relevant portion of the order is re produced herein below for ready reference:

"There is no dispute that the Petitioner has made several representations to the concerned Authority **not being the Enquiry Officer as he has not been appointed** for inspection of the selection file. In our opinion, therefore, the Disciplinary Authority ought to have considered the



representation instead of informing her that such a representation can be considered only by the Enquiry Officer.

The impugned order is, therefore, set aside.

The representation of the Petitioner submitted for inspection to the selection file will be considered by the Disciplinary Authority at this stage having regard to relevance of the documents, as mentioned in the representation and order will be passed by the Disciplinary Authority as to whether it would grant the inspection of the aforesaid document based on the reasons mentioned in the application. The detailed reply will be filed only after the Disciplinary Authority decides whether inspection of the selection file should be given. This decision must be taken by the Disciplinary Authority within two weeks from today.

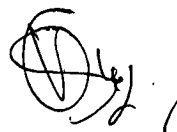
Mr. Chatterjee, the learned counsel appearing for the Railways states that the Railways will follow the seal cover procedure with regard to the promotion to the post of Divisional Railway Manager (DRM).

The petition is disposed of with no order as to costs."

5. Thereafter, in pursuance of the direction issued by the Hon'ble High Court of Calcutta, the Disciplinary Authority vide letter dated 29.03.2016 rejected the application of the applicant for inspection of records. The relevant portion of the said order of rejection is reproduced herein below for ready reference:

"7. And, now, therefore, after giving careful consideration to the facts and circumstances relevant to the case including the representations of the CO, the Disciplinary Authority in compliance of orders of the Hon'ble High Court, Calcutta in W.P.C.T. No. 55 of 2016 has observed/decided in the matter as under:

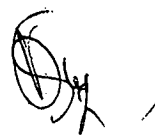
"After going through the case, I find that all the relevant documents (i.e. 24 no. of relied upon documents) have already been given to the CO along with the Charge Memorandum dated 25.03.2015. And, all these documents have also been inspected by the CO, in original. I also note that only a few



RUDs emanate from the selection file. Keeping in view the detailed documents given to the CO, I find that these documents are adequate enough for the CO to submit her defence, in writing. I am also constrained by the statutory provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 which allow consideration of admissibility of 'additional documents' by the Inquiry Officer for which the CO shall indicate the relevance of the documents required by him/her. However, the proceedings are yet to reach that stage. Therefore, I am not inclined to accede to the CO's request for grant of additional document as sought for at this stage, as the same is neither relevant nor supported by rules. In these circumstances, the CO may submit her detailed reply for consideration, within a period of 10 days positively from the date of receipt of this order and the decision to remit the case to inquiry, for which orders were issued by this Ministry's on 08.03.2016, would be kept in abeyance, till further orders."

8. The said Smt. Binita Mitra is required to acknowledge the receipt of this order, in writing."

6. By the aforesaid order, the Disciplinary Authority taking note of the representation of the applicant vis-a-vis the Rules of the railway and came to the conclusion that the documents supplied to the applicant along with the charge sheet are adequate enough to submit the written statement of defence. In the said order, the Disciplinary authority has also considered the request of the applicant for additional documents with reference to the Rules and held that she may make such request before the IO stating the relevance of such additional documents. Further it was held that the CO may submit her detailed reply for consideration, within a period of 10 days positively from the date of receipt of this order and the decision to remit the case to inquiry, for which orders were issued by this Ministry's on 08.03.2016,



would be kept in abeyance, till further orders. Thereafter, another order was passed on 12.04.2016 by the Railway Board which reads as under:

"Whereas, in compliance of the orders dated 16.03.2016 passed by the Hon'ble High Court of Calcutta in W.P.C.T.No. 55 of 2016, an order of even number dated 29.3.2016 was passed by the Disciplinary Authority i.e. the Railway Board in this case, inter alia conveying the decision regarding perusal of the selection file i.e. an 'additional document' by Smt. Binita Mitra, FA & CAO/WS, South Eastern Railway and also advising her to submit her detailed reply within a period of 10 days from the date of receipt of the order which was received by her on 30.3.2016. While issuing the order dated 29.3.2016, it was also simultaneously decided that the decision to remit the case to inquiry for which orders were issued by the Railway Board on 8.3.2016 would be kept in abeyance till further orders.

2. And, whereas, it is observed that the said Smt. Binita Mitra did not submit her reply within the stipulated time frame as mentioned above, which indicates that she has no representation to make in the matter.

3. And, now, therefore, considering the position, it has been decided by the Railway Board that the inquiry, for which the orders were initially issued vide this Ministry's order of even number dated 8.3.2016 but kept in abeyance vide this Ministry's order of even number dated 29.3.2016 need not be held back further and the inquiry proceedings may now be taken forward.

4. The said Smt. Binita Mitra is required to acknowledge the receipt of this order, in writing.

5. By order and in the name of the Railway Board."

7. The learned Counsel for the applicant would submit that the order passed by the Tribunal has been set aside by the Hon'ble High Court of Calcutta and as a result of which the original application shall stand restored. He further submits that as the order of this Bench in the



OA has been set aside by the Hon'ble High Court of Calcutta this Tribunal is competent to pass appropriate order in respect of the orders passed by the railway Board on 29.03.2016 and 12.04.2016.

8. On the contrary, the learned counsel appearing for the respondents strongly refuted the stand of the applicant and would submit that there was no such direction of the Hon'ble High Court, Calcutta enabling this Bench to hear and decide the OA afresh on merit. The Hon'ble High Court, Calcutta set aside the order of this Tribunal and consequently directed the disciplinary authority to consider the application of the applicant for inspection of RUDs. The order setting aside of the order of this Tribunal was virtually setting aside of the order to the extent of the direction that the applicant to file reply to the charge sheet and not the other part of the order wherein the disciplinary authority was directed to decide the application of the applicant for inspection of documents. The only change in the High Court order is that the direction to file the written statement of defence by the applicant was lifted and that too for the reason that by that time the IO was not appointed.

9. So far as the merit of the case is concerned, the applicant's counsel would submit that the order of the Hon'ble High Court has not been complied with by the Disciplinary Authority. The rule position has been considered by the Hon'ble High Court in its order and then directed the Disciplinary Authority to consider the case of the applicant without filing the reply. It was further submitted by the learned counsel

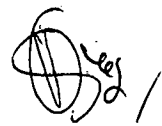


for the applicant that merely because the IO has a right to consider the necessity of inspection of additional documents does not take away the right of the Disciplinary Authority to consider the same.

The learned counsel for the Respondents refuted the stand of the learned counsel for the applicant by stating that the DA in his order categorically formed the opinion on the basis of the materials available on record that the inspection of additional documents is not at all required and the documents supplied to the applicant along with the charge sheet are sufficient to submit the written statement of defence by the applicant. The disciplinary authority further directed the applicant to file her reply within ten days but the same was not filed by her before the disciplinary authority as directed, therefore the order keeping in abeyance stands withdrawn and the matter was sent for enquiry.

10. We have considered the rival submissions of the respective parties. We are of the view that the MA cannot be allowed for the reasons mentioned herein below:

- (i) Though the order passed by this Tribunal in OA No. 177 of 2016 was set aside by the Hon'ble High Court, Calcutta and at the same time direction was issued to the Disciplinary authority to consider the application of the applicant for inspection of the documents and did not remit the matter back to this Tribunal for consideration afresh. In



absence of any such order or direction, the OA cannot be restored;

- (ii) The order of the Hon'ble High Court, Calcutta has been complied with by the Disciplinary Authority and intimated the result thereof to the applicant. If according to the applicant, the compliance of the order by the disciplinary authority is not in accordance with the direction of the Hon'ble High Court or the Rules, it is a matter to be agitated in a fresh legal proceeding in law and not by this MA as in the instant case;

11. In view of the above, without expressing any opinion on the merit of the issues raised in the MA, this MA stands dismissed.

However, the applicant is granted liberty to question the validity, justifiability and legality of the orders passed by the Disciplinary Authority before the appropriate forum in appropriate proceeding in accordance with law. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judl.)