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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. MA 350/366/2017
(OA 350/36/2016)

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

SUMIT JAISWAL

S/o Late Ramji Prasad,
Working as Asst. Commercial Manager
Badarpur, under DRM,
Lumding Division,
N.F.Railway, Permanent resident of
Station Road,
P.O. & P.S. & Dist.- Kokrajhar
(Assam) BTAD, Pin - 783370,
Presently residing at
Deshbandhupara,
P.O. & P.S. - Siliguri,
Dist. - Darjeeling,
Pin - 734004.

...APPLICANT

VERSUS

1. Union of India, through
General Manager,
N.F.Railway, Maligaon,
Guwahati, Assam,
Pin - 780011.
2. The Chief Commercial Manager,
N.F. Railway, Maligaon,
Guwahati, Assam,
Pin - 780011.
3. The Divisional Railway Manager,
N.F.Railway,
Lumding Division,
Lumding, Assam,
Pin - 782447.

...RESPONDENTS.

For the applicant : Mr.B.Chatterjee, counsel
Ms. J.Dutta, counsel

For the respondents: Mr.B.L.Gangopadhyay, counsel

Heard on : 4.5.2017

Order on : 18.5.2017

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O R D E R

Ms.Jaya Das Gupta, A.M.

We are considering the MA application of the applicant here.

2. The applicant states that the disciplinary authority on 5.4.2017 had issued a notice under the provision of Standard Form 7 of Railway Servants (Discipline & Appeal) Rules, 1968 having decided to initiate disciplinary proceeding against the applicant through an office order dated 5.4.2017 (Annexure MA/1) which is set out below :

STANDARD FORM NO.7
STANDARD FORM OF ORDER RELATING TO APPINTMENT OF INQUIRY
OFFICER/BOARD OF INQUIRY
(RULE-9(2) OF RS (D&A) RULES, 1968

NO. E/74/GAZ/604/CON
 RAILWAY – NORTH EAST FRONTIER RAILWAY
 PLACE OF ISSUE MALIGAON
 DATE 5.4.2017

O R D E R

Whereas an inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is being held against Shi Sumit Jaiswal, ACM/DBRT.

And whereas the undersigned considers that an inquiry officer should be appointed to enquire into the charges framed against him.

Now, therefore, the undersigned in exercise of powers conferred by the sub-rule(2) of the said Rule, hereby appoints Smt. Papiya Lahiri (Retired FA & CAO), as Inquiry Officer to enquire into the charges against the said Shri Sumit Jaiswal, ACM, DBRT.

(Aneet Dulat)
 Chief Commercial Manager
 N.F.Railway
 (Disciplinary Authority)"

3. The applicant also stated that the disciplinary authority on 6.4.2017 had appointed an Enquiry Officer by order dated 6.4.2017 and instructed the enquiry Officer to initiate disciplinary proceeding against the applicant. It is the contention of the applicant that since according to him a solemn order dated 25.6.2015 has already been issued by a competent Court of Law during investigation of his Caste Certificate and purportedly the competent Court of Law has come to the conclusion that the Caste Certificate in the name of the applicant is genuine then no charge sheet should have been filed against him.

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Accordingly no enquiry should be started against him under the Railway Servants (Discipline & Appeal) Rules, 1968.

4. He has sought for the following reliefs in MA :

"Under such facts and circumstances the applicant prays for intervention in the matter and exercise judicial discretion and stay the disciplinary proceedings initiated in terms of the notices dated 5.4.2017, 6.4.2017 and 13.4.2017 and direct the disciplinary authority not to proceed with the proposed disciplinary proceedings forthwith, till disposal of the instant Original Application."

5. There is no allegation that the charge sheet has been issued by an incompetent authority. There is no allegation either that the charges are vague. On the above grounds also the charge sheet cannot be set aside and quashed and hence we cannot stop the enquiry to proceed as per the statute i.e. Railway Servants (Disciplinary & Appeal), Rules, 1968.

6. His grievance is because he is under the impression that he has been given a clean chit by a CBI Court and therefore no disciplinary proceeding can be initiated against him. However, it is made clear that a disciplinary proceeding and a Court case can always go on simultaneously because unlike the proceeding in the Court case the disciplinary proceeding is concerned with the issue of preponderance of probability.

7. Also in a matter of intervening in a disciplinary proceeding, the Hon'ble Apex Court has directed that in judicial review the powers of Courts/Tribunals is very limited. The scope of judicial review has been examined by the Hon'ble Apex Court in the case of **Ekta Shakti Foundation -vs- Govt. of NCT [AIR 2006 SC 269]** and is set out below :

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"10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J. & K. (AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

11. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation."

As long as the disciplinary proceeding is carried on as per statutes the Tribunal cannot interfere.

8. Allegation of malice against the respondent authorities have also been pleaded by the applicant without putting forth any strong evidence as such. The issue of "malus animus" was considered in the case of ***Tarachand Khatri -vs- Municipality of Delhi [AIR 1977 SC 567]*** wherein the Hon'ble Supreme Court has held that the Court would be justified in refusing to carry on investigation into the allegations of malafides if necessary particulars of the charges making up a *prima facie* case is not given in the petition. The burden of establishing malafide lies very heavily on the person who alleges it and there may not be sufficient material to establish "malus animus". In this ground also the MA of the applicant fails.

9. Therefore considering the above conclusions the MA deserves to be dismissed. MA is accordingly dismissed.

10. It is directed that the applicant will submit his grievance to the Enquiry Officer who shall dispose of it strictly as per law.

11. As the pleadings are complete in the OA, list for final hearing on 2.11.2017 as already ordered.

(JAYA DAS GUPTA)
MEMBER (A)

(A.K.PATNAIK)
MEMBER (J)

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