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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.746/ 2016

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Jamini Ranjan Ghosh, son of Late
Anil Kumar Ghosh, resident of
Village-Angana, Post Office-Krishnanagar,
District – Nadia

.....Applicant

- Versus -

1. Union of India, represented by the General Manager, Eastern Railway, "Fairlie Place", Kolkata -700001;
2. The General Manager, Eastern Railway, "Fairlie Place", Kolkata-700001;
3. The Chief Personnel Officer, Eastern Railway, "Fairlie Place", Kolkata -700001;
4. The Divisional Railway Manager, Eastern Railway, Sealdah Division, Post Office-Sealdah, Kolkata-700012;
5. The Divisional Commercial Manager, Eastern Railway, Sealdah Division, Post Office-Sealdah, Kolkata-700012;
6. The Senior Divisional Commercial Manager, Eastern Railway, Sealdah;
7. The Divisional Commercial Manager, Eastern Railway, Sealdah Division, Post Office-Sealdah, Kolkata-700 014

.....Respondents

For the applicant : Ms. M. Bhattacharyya, counsel
Mr. B.S. Roy, counsel

For the respondents : Mr. A.K. Banerjee, counsel

Heard on : 09.08.2018

Order On : 26.9.18

ORDER

Bidisha Banerjee, Judicial Member

As a sequel to an earlier O.A. being O.A.No.350/1383/2015, this application has been filed in order to seek the following reliefs:-

(i) "That the Respondents may kindly be ordered to pay the applicant as follows:-

- a. To pay the applicant all arrear Pay & Allowances as per Rules for the period from June 2005 to till March, 31, 2006(less, paid if any);
- b. To pay Penal Interests as per Railway Board's Directives on all the arrear pay and allowances as would be paid as per prayer (b) above;
- c. To pay the applicant all arrear Regular Monthly Pension, just from the next date of his normal date of Superannuation i.e. from April 2006 to till date and to continue such payment till the applicant survives;
- d. To pay the applicant interests on all accumulated sums of such arrear Monthly Pension as per rules;
- e. To pay the applicant all monthly increments as per rules with interests thereof;
- f. To pay the applicant Death-cum-Retirement Gratuity with interest as per rules;
- g. To pay Provident Fund Balance if not already been paid, with interests thereupon as per banking rate;
- h. To pay all leave encashment salaries as per rules and with interest upon such accumulated sums as per rules;
- i. To pay all Medical Allowances with interests on such accumulated sums on this head as per rules;

- j. To pay the accumulated BONUS as had been declared by the Indian Railway Authorities the years 2005-2006 with interests thereupon as per rules;
- k. To pay all other usual allowances as per rules with interests on such accumulated sums thereon;
- l. To pay the applicant benefits under the "Central Government Employees Insurance Scheme(CGEGIS), 1980" as per Office Memorandum of the Ministry of Finance, Department of Expenditure's O.M. No.7(1)(EV)2004, dated 31.12.2004 as per "Tables of Benefits" for the saving fund of the scheme based on a subscription of Rs.10/- per month from 01.01.1982 to 31.12.89 and Rs.15/- per month w.e.f. 01.01.90 onwards ("Accumulated GIS benefits as per rules" in short) as has been issued and circulated by the Railway Board (Ministry of Railway);
- m. To pay the applicant Provident Fund Linked Bonus (PLB) for his training period as he has subsequently been appointed in a regular post, vide Railway Board's No.E(P&A)11-2004/PLB-6 dtd 14.01.2005;
- n. To issue the applicant Post Retirement Complimentary Pass as per rules;
- o. To allow the applicant to commute 1/3rd of his Monthly Pension as per rules and to get commuted value of his pension;
- p. To order the Respondents to give effect and to implement the recommendation of 5th Central Pay Commission regarding to conversion of 50% Dearness Relief into Dearness Pension as per Order of the Railway Board being no.PC/V/97/1/9/6, dated 22.02.2005;
- q. To order the Respondents to give effect of the Hon'ble President's desire to pay 17% of pay per month of Dearness Allowance allowances w.e.f. 01.01.2005 to till the date of superannuation of the applicant, vide Railway Board's Order No.PC/V/97/1/7/14, dated 08.04.2005;
- r. To grant and pay the applicant the Dearness Relief with its revised rates vide Railway Board's Order No.PC /V/97/1/9, dated 30.08.2005;

(ii) Any other Order or Orders and/or direction or directions as Your Lordships may deem fit and proper."

2. The applicant has canvassed that being appointed on compassionate ground with the approval of the General Manager, the Divisional Commercial Manager had no authority to remove him from service as he was neither the appointing authority nor an authority equivalent in rank to an appointing authority and, therefore, the removal order deserved to be quashed.

3. On 15.01.2016, pursuant to a direction of this Tribunal in O.A.No.350/1383/2015 upon the applicant to prefer a statutory appeal before the appellate authority, the Senior Divisional Commercial Manager(Sr.DCM), Sealdah, on his appeal, informed the applicant as under :-

"While examining the DA case file, it is observed that your earlier appeal dt.29.03.06 against removal order passed by DCM/SDAH was entertained as well as disposed off by DCM/IC(Appellate Authority) & the aforesaid order was sent to you as well as your Ld. Advocate vide this office letter of even no. dated 18.01.10. Since your appeal dt. 29.03.06 has already been disposed off by the Competent Appellate Authority, there is no further scope for disposal of the same.

Hence, a copy of Speaking Order dt. 18.01.10 passed by Appellate Authority DCM/IC/Sealdah is enclosed herewith for ready reference. This is without any prejudice."

4. The earlier speaking order dated 18.01.2010 reads as follows:-

.....(not legible) the charges leveled against the delinquent staff, Enquiry Officer's(not legible) proceedings, Charge Official's representation and Charge Official's(not legible) details along with findings of Disciplinary Authority. It observes that as(not legible) of the Hon'ble CAT, Kolkata passed in O.A.No.,1121 of 2003 dt.23.2.2004 had directed to supply documents as per relevancy and complete the proceedings within 4 months. The said direction for supply the relevant paper documents were sent to Charge Official by respondent in time. Hence, reasonable opportunities were granted to the applicant. It is mentioned here that the applicant did not co-operate with the DA proceedings from its inception and it was brought to the notice of court in earlier O.A.No.1121 of 2003. That the applicant had filed the said case only to prolong the enquiry without participating(not legible). Taking into consideration the said submission of the Railway, the Ld.(not legible) of applicant had given assurance before the Court that his(not legible) to operate with the respondents in the matter in all respect as evident from the said

judgment dated 23.2.2004. It is observed that the Enquiry Officer followed the enquiry procedure extending the natural justice to the Charge Official. It is further observed that the Charge Official in the beginning attended the enquiry with his Defence Helper but as the enquiry was(not legible) the Charge Official started to non-cooperate.

However, enquiry was concluded on 09.7.04 and the said enquiry report has delved to Charge Official and it was received by him on 26.7.04. Although(not legible) advised to submit his report within 15 days on receipt of the said letter but he submitted an evading representation dated 03.8.04, since he did not come to submit his defence reply even after expiry of 8 months, the Disciplinary Authority had given an opportunity to give a personal hearing adopting all possible means i.e. sending letters to special messenger under whom the Charge Official was working, through register post, through control message etc. But the Charge Official did not meet with the Disciplinary Authority. As such natural justice(not legible) him in all respect.

Even the representation and in the appeal preferred by Charge Official(not legible) not contain any point/defence against the charges leveled against him.

It is observed from the Enquiry Officer's report that the defence side failed to light anything during cross examination in respect to prove as incorrect that the duplicate fake MSTs for originating destination fare, Taherpur to Park Circus via Sealdah fraudulently to the passengers on various occasions for his personal gain. Sri Ghosh kept the 22 nos. duplicate/fake MSTs which recovered from Sri J.R. Ghosh's working table drawer at Taherpur Station. The said drawer was locked and the key was with Sri Ghosh, Charge Official.

As such, the charges are of very serious nature and those involved keeping of fake MSTs having uncounted and undeclared cash amount to the tune of Rs.3298.00 etc. during duty hours of Taherpur Station. There is no point/defence of Sri Ghosh(Charge Official) in his representation and appeal to prove himself free from the charges leveled against him.

Under the above fact and circumstances, the undersigned as Appellate(not legible) matter applying mind properly and uphold the punishment order dated 13.6.05 passed by the Disciplinary Authority.

It is disposed of in compliance with Hon'ble CAT/Kolkata's Judgment order dated 15.9.09."

5. Ld. counsel for the applicant at hearing would vociferously submit that the appeal was not disposed of in terms of the directions of this Tribunal as in

O.A.No.1383 of 2015 and, therefore, the order dated 15.01.2016 deserves to be quashed.

6. Ld. counsel for the respondents on the contrary would submit that the only ground for challenge was in regard to the authority of CCM to remove the applicant from service. Inviting our attention to Indian Railway Establishment Code, Vol.I Ld. counsel would contend that the applicant was rightly removed from service by the CCM who was the Appointing Authority in regard to the post held by the applicant. Dispelling the claim of the respondents, Ld. counsel for the applicant would submit that he had sought for an information through RTI as to who enjoyed the authority of taking decisions in regard to compassionate appointments in Indian Railway Services at its zonal level which was replied to as "by General Manager/CPO or the power delegated by them to any other official". Ld. counsel would further refer to the offer of appointment dated 08.04.1982 issued on behalf of the CPO in order to contend that the appropriate Disciplinary Authority of the applicant was either the CPO or the General Manager and, therefore, removal by Chief Commercial Manager was bad in law.

7. Ld. counsels were heard and materials on record were perused.

8. In view of such factual dispute in regard to the authority competent to remove the applicant from service in the light of the IREC, Vol.I and the appointment order of the applicant referred to supra, which has not been addressed while issuing the speaking order dated 18.01.2010 and the order dated 15.01.2016 as it does not speak on the authority of the CCM to act as Disciplinary Authority, we dispose of this O.A. by quashing the orders dated 15.01.2016 and ^{by P} remand the matter back to the Appellate Authority to delve into the allegations of

the applicant as contained in the Appeal in regard to competence of the CCM to issue removal order in view of his appointment order dated 08.04.1982 and schedule of powers etc. and pass appropriate speaking order within 8 weeks from the date of receipt of this order.

9. The O.A. accordingly stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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