

**Central Administrative Tribunal
Calcutta Bench**

OA No.1742/2015

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Order reserved on: 29.03.2016

Pronounced on: 30.5.16**Hon'ble Ms. Bidisha Banerjee, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Asutosh Biswas,
S/o late Naren Biswas,
R/o Village Khordar Chak,
Post Office Vidyasagar University,
District Paschim Medinipore,
Pin Code-721301.

-Applicant

(By Advocate Shri A.P. Deb)

-Versus-

1. Union of India, service through
The General Manager,
South Eastern Railway, Garden Reach,
Kolkata-700 047.
2. The Senior Divisional Operation Manager,
(Appellate Authority), South Eastern Railway,
Kharagpur, District Paschim Medinipore,
Pin-721301.
3. The Divisional Operation Manager (M),
South Eastern Railway,
Kharagpur, District Paschim Medinipore,
Pin-721301.
4. Senior Divisional Personnel Officer,
South Eastern Railway,
Kharagpur, District Paschim Medinipore,
Pin-721301.
5. Sri B.L. Narayana,
CDTUI/XOP and Inquiry Officer,
South Eastern Railway,

*Pronounced
on 30.5.16.**✓*

Kharagpur, District Paschim Medinipore,
Pin-721301.

-Respondents

(By Advocate Shri A.K. Banerjee)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA read as under:

- "a) To quash and/or set aside the enquiry proceeding as it suffers from procedural lapses;
- b) To quash and/or set aside the enquiry report dated 07.11.2010 and charge sheet dated 07.05.2010.
- c) To quash and/or set aside the order of reversion issued by the Departmental Authority on 27.05.2011.
- d) To quash and/or set aside the Show Cause Notice dated 14.09.2015 and the order of dismissal from service dated 09.10.2011 issued by the Appellate Authority.
- e) For a direction upon the Respondents to reinstate the applicant in service with all consequential benefits including payment of salary in the former post, seniority etc. as if nothing has happened."

2. The brief facts of the case are as under.

2.1 The applicant was appointed in group 'D' cadre in South Eastern Railway (SER) on 09.06.1992. After gaining departmental promotion, on 28.10.2005 he was placed in the grade of TPM-B having pay scale, Rs.2650-4000. While he was posted under Yard Master, Nimpura, a major penalty

charge-sheet vide Annexure A-1 dated 07.05.2012 was issued to him, which contained the following charges:

"ARTICLE -I

That the said Sri Asutosh Biswas-CLM-II while functioning as CLM at NTY is alleged to have neglecting his duty in that after accepting promotion as CLM II at NTY he failed to perform the duty with higher responsibility due to poor working knowledge.

He also threatens of vigilance cases and misbehaves with the superiors and co-workers.

ARTICLE -II

He absconded from duty on 05.5.10 from 5.00 hrs while working at East Cabin/NTY and used unparliamentary language and physically assaulted Sri G.C. Parida, Dy. CYM/NTY on duty on 04/5/10.

Charges: Absconded from duty, misbehaviour & manhandle.

Thus, by the above cited act Sri Asutosh Biswas, CLM II/NTY failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant contravening Rule 3.1 (i), (ii), (iii) of the Railway Services Conduct Rules, 1965 rendering him liable for disciplinary action being taken against him in terms of Railway Servants (D&A) Rules, 1968 as amended from time to time."

2.2 An Enquiry Officer (EO) was appointed. The applicant participated in the enquiry. The EO submitted his Annexure A-2 report on 14.02.2011, in which the charges of absconding and manhandling were found to be proved against the applicant.

2.3 Acting on the EO's report, the Disciplinary Authority (DA), i.e., Divisional Operation Manager (M), SER, Kharagpur, vide his Annexure A-3 order dated 18.03.2011, reverted him to his earlier post of TPB-B with initial pay of Rs.7160/- (when the Annexure A-3 punishment order was passed by the

DA the applicant, after getting promotion, was holding the post of CLM-II/NTY).

2.4 Aggrieved by the order of the DA, the applicant filed his Annexure A-4 appeal dated 27.05.2011 before the departmental Appellate Authority (AA), i.e, Senior Divisional Operating Manager, SER, Kharagpur, who turned down the appeal but did not pass any speaking order in terms of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

2.5 The applicant approached this Tribunal in OA-938/2012 challenging the orders of the DA and AA. The said OA was disposed of on 14.07.2015 and the case was remanded to the AA with a direction to pass a speaking order.

The operative part of the order reads as under:

"3. Since the order passed is not in accordance with the above, we quash the same and remand the matter back to the said authority i.e., Sr. Divisional Operation Manager, S.E. Railway, Kharagpur to issue a fresh order on appeal in terms of Rule 22 of RS (D&A) Rules within a period of two months from the date of communication of this order."

2.6 Pursuant to the direction of the Tribunal, the AA issued Annexure A-6 Show Cause Notice (SCN) to the applicant proposing enhancement of the punishment. The contents of the SCN read as under:

"In compliance of the order of Hon'ble CAT-Cal dated: 14.07.2015 on the OA no.938 of 2012 and in consequence of quashing the earlier order of Appellate Authority dated: 14.06.2011 the undersigned has gone through the entire D&A case file including



the Punishment imposed by DOM(M)/KGP vide Punishment Notice No.GM/57/Staff/10/AB/10/AB-2 dated: 18.03.2011 and the appeal preferred by you against the punishment. The Punishment imposed by DA is inadequate and not sufficient/commensurate with the gravity of the offence.

Hence, you are to Show Cause as to why the punishment as imposed by DA, i.e., "as a measure of punishment you are reverted to your former post (TPM-B) with initial pay Rs.7160/- in the pay band Rs.5200-20,000+GP1800 with immediate effect until you are found fit by the competent authority to be restored to the higher post of CLM II." will not be enhanced for the misconduct.

Your explanation should reach to the undersigned within 7 (seven) days from the date of receipt of this Show Cause Notice."

2.7 The applicant replied to the ibid SCN vide Annexure A-6 letter dated 23.09.2015. After considering the reply of the applicant, the AA finally passed the impugned Annexure A-7 order dated 09.10.2015, dismissing the applicant from service. The operative part of the order reads as under:

"Being Appellate Authority, I therefore, find the CO is guilty of the charges of grave misconduct in violation of Railway Services (Conduct) Rules, 1966 Rule 3.1 (ii)&(iii), and in view of justice and overall interest of railway operations, decide that the CO Sri Asutosh Biswas be Dismissed from Railway Service with immediate effect without any compassionate allowance."

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. Thereafter the applicant filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 29.03.2016. Shri A.P. Deb, learned counsel for the applicant and Shri A.K. Banerjee, learned counsel for the respondents argued the case.

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4. The learned counsel for the applicant, besides highlighting the issues raised in the OA and the rejoinder, submitted that the AA has exceeded its powers and without any justification, has enhanced the punishment, dismissing the applicant from service. He further submitted that the AA has taken extraneous aspects into consideration, which were not part of the charge-sheet and that the said authority failed to state reasons for which the applicant deserved the punishment of dismissal. It was also submitted that the DA had passed the punishment order dated 18.03.2011 considering the joint report of 45 Heads dated 07.05.2010 and terming the same as serious issue, but failed to note that no such specific charge has been made against the applicant in the charge-sheet. Concluding his arguments, the learned counsel stated that the applicant has been punished by the DA and AA without any justification; as such the OA may be allowed.

5. Per contra, learned counsel for the respondents submitted that the applicant has approached this Tribunal in the instant OA, challenging the orders passed by the DA and AA but without exhausting all the departmental remedies. He said that the AA order clearly states that the applicant has liberty to approach the Revisional Authority (RA) within a period of 15 days but the applicant has not availed of that

remedy. The learned counsel submitted that the applicant may be directed to file a revision petition before the RA against the impugned orders of the AA and DA.

6. We have considered the arguments put-forth by the learned counsel for the parties and perused the pleadings and documents annexed thereto. We are in agreement with the learned counsel for the respondents that the applicant has approached this Tribunal without exhausting of the available departmental remedy. He ought to have challenged the order passed by the DA and AA in a revision petition before the RA, who is ADRM, Kharagpur.

7. Without going into the merits of the case, we hereby direct the applicant to file a revision petition before the RA within a period of 15 days from the date of receipt of a certified copy of this order. We also direct the RA to dispose of the revision petition, if filed by the applicant, within a period of three months thereafter. Needless to say that a copy of the order so passed, shall be sent by the RA to the applicant. In case of the applicant remaining aggrieved by the order of the RA, he shall have the liberty to challenge it as also the orders passed by AA and DA at the appropriate legal forum, if so advised.

8. With the above directions, the OA is disposed of.

9. No order as to costs.

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(K.N. Shrivastava)
Member (A)

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(Bidisha Banerjee)
Member (J)

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