

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH



R.A/350/02/2019
(OA 193/2015)

Date of Order: 11.7.19.

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

Narayan Chandra Patra,
son of late Birendra Nath Patra,
Ex-Senior Commercial Clerk (Goods),
Under the Area Manager,
South Eastern Railway, Shalimar,
residing at 22, Joy Shankar Lane,
Uttarpara, Hoogly-712258.

.....Applicant

Vrs.

1. Union of India, service through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700043.
2. The Chief Commercial Manager, South Eastern Railway 14, Strand Road, Kolkata-700001.
3. The Additional Divisional Railways Manager, South Eastern Railway, Kharagpur, Midnapur (West), Pin: 713301.
4. The Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur, Midnapur (West), Pin: 713301.
5. The Area Manager, South Eastern Railway, Shalimar, Howrah, Pin: 711103.

.....Respondents

For the Applicant(s): Mr. G.Singh, Ms. S.Chakraborty, Counsel

For the Respondent(s): Mr. R.K.Sharma, Counsel

ORDER

Bidisha Banerjee, Member (J):

The order dated 04.02.2019 passed in O.A. No. 193/2015, against which this Review Application has been preferred, reads as under:

"6. At the outset, we would fumigate our mind with the celebrated decisions of the Hon'ble Apex Court deprecating

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issuance of cryptic orders by the disciplinary authorities, the decisions being :-

(i) *Som Datt Datta vs. Union of India &Ors. [(1969) 2SCR 177];*

(ii) *TarachandKhatri vs. Municipal Corporation, Delhi [AIR 1977 SC 567]*

(iii) *R.B. Bhatt vs. Union of India &Ors.[AIR 1986 SC 1040]*

(iv) *Cyril Lasrado vs. Juliana Maria Lasrado(2004) 7 SCC 436*

(v) *Rakesh Bhatnagar vs. Union of India &Ors.(2014) 15 SCC 646*

7. *Ld. counsel for the applicant would cite several decisions of the Hon'ble Supreme Court in order to contend that the applicant deserved fair treatment in the proceedings and that the authorities having never furnished the enquiry report, prevented him from effectively putting up his defence against the same, which resulted in his dismissal.*

8. *We had asked for the proceedings file to find whether there was any procedural flaw. Ld. counsel for the respondents would submit on instruction that departmental proceeding file was not traceable at this distant date, therefore, it could not be made available despite clear direction of this Tribunal. As such, this Tribunal is not in a position to adjudicate whether the enquiry proceedings were drawn up and concluded by affording full opportunity to the applicant to present his case and effectively put up his defence.*

9. *At that juncture, the ld. counsel for the applicant would renew his submission and agree that the applicant would be happy and satisfied if compassionate allowance was granted to him in terms of RBE No.164/2008, which would render conceivable justice to him.*

10. *Accordingly, we would dispose of this O.A. with consent of the ld. counsels, granting liberty to the applicant to prefer a comprehensive representation to the authority concerned in terms of RBE No.164/2008 within a period of two weeks from the date of receipt of a copy of this order. In the event such representation is preferred, the same shall be considered sympathetically in the light of RBE No.164/2008 with appropriate orders to accord such benefits to the present applicant, as he would be entitled to in law, within a further period of two months from the date of receipt of such representation.*

However, no order is made as to costs."

2. The order was, therefore, rendered on the consent of the parties and having considered the submissions of the Respondents that the departmental proceeding file was not traceable and the Tribunal having noted that it was not in a position to adjudicate whether inquiry proceeding was drawn up and concluded by affording full opportunity to the applicant to present his case and effectively put up his defence. We note that the penalty order was issued in 2004 and the applicant had preferred an appeal in 2012. No specific grounds have been put forth justifying such filing of the Review Application. However, applicant has pleaded as under:

The Disciplinary Authority knowing fully well took decision ex-parte without giving any opportunity of personal hearing and the Disciplinary Authority imposed punishment as "Dismissal from Service" and issued punishment order without supplying the copy of the enquiry report and without issuing any notice for proposed punishment and, in this way, the respondents have taken away the right of the applicant to make representation and the said point has not been considered by the Tribunal, which amounts an error apparent on the face of records and warrants a review of the judgment dated 04.02.2019. That, no consent was ever been given by the Ld. Counsel for the applicant about preferring representation to the concerned authority and the same is an error on the face of record and warrants a review of the judgment dated 04.02.2019.

3. At hearing, Ld. Counsel for the Respondents would draw our attention to a representation preferred by the applicant on 18.02.2019 pursuant to the

direction in the O.A., which was issued with the consent of the parties. The applicant has categorically stated as under:

"I beg to submit that I approached the Ld. Central Administrative Tribunal by filing Original Application being O.A. No. 350/193/2015 which was heard on 21.1.2019 and order was delivered on 4.2.2019.

A Xerox copy of certified copy is enclosed for your kind perusal.

I beg to submit that the Hon'ble Tribunal gave me liberty to make prayer before your Honour to give me benefit in conformity with the provision of RBE No. 164 of 2008 and I have been directed to submit a prayer before you on receipt of copy of the order and accordingly I submitted prayer through my Ld. Advocate for paying me all benefits including compassionate allowance in terms of RBE No. 164 of 2008.

I humbly pray before your Honour to kindly consider my prayer for allowing me the benefit of notification RBE No. 164 of 2008 and I am enclosing the notification RBE No. 164 of 2008."

Ld. Counsel would submit that the applicant later on withdrew the representation dated 18.02.2019.

4. The question that arises for consideration is whether there was an error apparent on the face of the record, which would make it imperative to review the order on the basis of the submissions made by the applicant.

5. Ld. Counsel for the applicant would strenuously urge that he never gave consent to such order and, therefore, there has been wrong recording in the order. We find from the letter dated 18.02.2019 written by the applicant himself that the letter was written pursuant to the liberty granted by this Tribunal to seek benefit in conformity with the RBE No. 164/2008, which act of the applicant goes a

longer way to show that he had agreed to the order passed in the O.A. He complied with the directions passed in the O.A. and had sought to restrict his consideration only in terms of RBE No. 164/2008.

6. Having noticed, as above, we fail to concur with the submission that the order was issued without consent of the parties and, therefore, it should be reviewed due to wrong recording. On the face of it, about the order being rendered on consent of the parties and applicant having preferred a representation on 18.02.2019, the applicant is estopped by his conduct in claiming otherwise. Accordingly, the R.A. fails and is dismissed.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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