

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

O. A. No.350/00886 of 2016

In the matter of :

SUMIT JAISWAL, Son of Late Ramji Prasad, aged about 38 years, working as an Assistant Commercial Manager, Badarpur, under DRM, Lumding Division, N.F. Railway, permanent resident of Station Road, P.O, P.S. & Distt: Kokrajhar (Assam) BTAD, PIN-783370 & presently residing at Deshbandhupara, P.O. & P.S: Siliguri, Dist: Darjeeling (W.B) PIN 734004

... APPLICANT

V E R S U S

1. **UNION OF INDIA**, through the General Manager, N.F. Railway, Maligoan, Guwahati, Assam, Pin-780011.
2. **THE CHIEF COMMERCIAL MANAGER**, N.F. Railway,

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Maligoan, Guwahati, Assam, Pin-
780011.

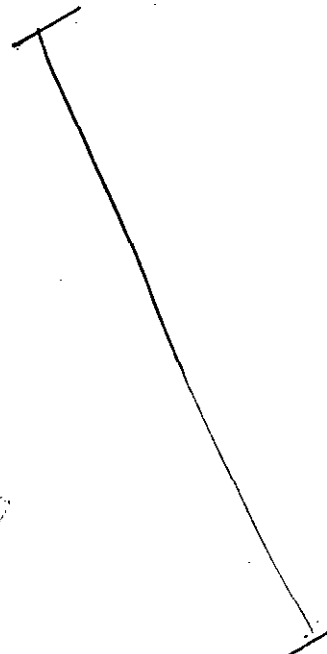
3. **The Financial Advisor & Chief
Account Officer, N.F. Railway,**
Maligoan, Guwahati, Assam, Pin-
780011.

4. **The Chief Personnel Officer, N.F.**
Railway, Maligoan, Guwahati,
Assam, Pin-780011.

5. **THE DIVISIONAL RAILWAY
MANAGER, N.F. Railway,**
Lumding Division, Lumding,
Assam, Pin-782447.

... RESPONDENTS

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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

OA 350/886 /2016
MA No. 255/2018

Heard on: 30.08.2019
Date of Order: 13.09.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sumit Jaiswal

... Applicant.

Versus

Union of India & Ors.

... Respondents.

For the Applicant(s) : Applicant, in person
For the Respondent(s) : Mr. A.K. Banerjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal praying for the following relief:

"(a) An order to quash/setting aside the impugned charge sheet dated 11.07.2013 being annexure "A-1" issued by CCM/N.F.Railway;

(b) An order to quash and/or setting aside the impugned order and or orders conducting DAR proceeding in respect of the impugned charge sheet dated 11.07.2013;

(c) An order do issue upon the Respondents authority from taking any step and/or further steps on the basis of impugned chargesheet dated 11.07.2013 being annexure "A-1" which is null and void in the eye of law;

(d) An order do issue upon the Respondents authority for giving effect of the sealed cover & grant due promotion to the Applicant in senior scale at par with juniors since 27.11.2013 as evident from the order dated 27.11.2013 of Sri T.K.Bhowmick with all consequential benefits with effect from November 2013;

(e) An order directing the official Respondents to produce the file/nothings in connection with the impugned charge sheet issued against the Applicant and all other relevant documents with all inspection to the Learned Counsel for the Applicant;

(f) Any other or further order....."

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2. Heard the applicant in person. Ld. Counsel for the respondents is also present and heard. Examined pleadings and documents on record.

3. The applicant had obtained an interim relief vide orders dated 15.06.2016, which had directed as follows:

"Ld. Counsel for the applicant pointed out that certain irregularities have been committed while conducting the enquiry. The original complaint was never made available to the applicant. The complainant was not made available for cross-examination. Out of 9 RUDs only one RUD was provided to him. He asked for 21 additional documents out of which only 4 documents were supplied to him and one was said to be not relevant."

2. That apart on 3.3.2016, the enquiry officer has himself admitted that there would be a partial denial of reasonable opportunity to the applicant and hence it is urged that the principles of natural justice was admittedly violated due to on-supply of one RUD and 16 additional documents which are very much necessary to defend the case by the charged official, and that the recording that the IO and the Po decided to proceed with the regular hearing would mean that the decision of IO has been taken at the dictate of PO.

3. In view of the above, the respondents are restrained from passing any final order in the proceedings. However, they may proceed with the enquiry.

4. The respondents are directed to file a reply within 4 weeks and 2 weeks time thereafter is granted for filing rejoinder, if any. List this matter on 27.7.2016."

4. The primary cause of grievance of the applicant, who has challenged the disciplinary proceedings is that, in spite of his repeated requests, he has not been furnished with all the documents that have been sought for by him in order to defend himself in such proceedings. In particular, the original complaint and the work distribution order dated 21.05.2011 was not provided to him, and, that, while he had asked for twenty one additional documents, only four documents were supplied and one such additional document was held to be non-relevant.

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5. Respondents have filed a supplementary affidavit on 14.08.2019 in which they would aver that the applicant has received a total of eight sheets plus all the RUDs, namely thirty three sheets from the concerned respondent authorities and that the applicant's acknowledgement dated 12.07.2018 is on record as at Annexure-R/2. The respondents would also refer to the inquiry report finalized on 31.03.2017 wherein the inquiry authority has stated that "listed RUDs and supplied additional documents are enough to examine and cross examine the DWs and PWs by the CO", to which, the applicant would vociferously contend that in the preliminary hearing dated 07.02.2014, the proceedings recorded that the additional listed documents have been examined and found to be relevant except item No. (j) of the 21 additional documents sought for by the applicant/charged officer.

Ld. Counsel for the Respondents would also submit that the Disciplinary Authority had issued a disagreement note to the applicant.

6. The applicant, during the course of hearing, filed his reply to the supplementary affidavit and vociferously agitated that, without the work distribution order dated 21.05.2011, which refers to the particular date on which the alleged misconduct had taken place as also the original complaint, he is prejudiced from suitably defending the charges alleged against him.

7. We find that the applicant has an opportunity to reply to the disagreement note. In addition, we hereby accord the applicant liberty to prefer a comprehensive representation to the Disciplinary Authority within 3 weeks of receipt of a copy of this order whereby he may articulate issues, which in his opinion, would so prejudice him as to prevent him from suitably defending

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himself against the allegations made in the charge memorandum. We would also direct the Disciplinary Authority that, in the event such representation is preferred by the applicant, the said authority should dispose of the same after due application of mind, in accordance with law and convey his decision to the applicant on each of the issues raised by the applicant by a reasoned and speaking order within a period of 12 weeks from the date of receipt of such representation from the applicant.

8. The respondent authorities are, however, at liberty to conclude the disciplinary proceedings thereafter as per Rules.

9. With these directions the O.A. is disposed of. There will be no orders as to costs.

M.A.No. 255/2018, arising out of O.A.No. 886/2016, praying for vacation of interim order is disposed of accordingly.

(Dr.Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)