

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 455 of 2013

Heard on: 27.9.2019

Date of order: 20.11.2019

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

Appa Rao,
Son of Late Lingaiya,
Aged about 46 years,
Ex-Male Safaiwala,
Under Sr. DMO (H&FW),
S.E. Railway,
Kharagpur,
Residing at Up Cutting Coli
(Near Running Room),
Unit - I, P.O. Kharagpur,
Dist. Paschim Medinipore,
Pin - 721 301.

Applicant

- VERSUS -

Union of India through the
General Manager,
S.E. Railway,
Garden Reach,
Kolkata - 700 043

ii. The Chief Medical Superintendent
& Appellate Authority,
S.E. Railway,
Kharagpur,
P.O. Kharagpur,
Dist. Paschim Medinipore.
Pin - 721301.

iii. The Sr. Divisional Medical Officer (HGW)
& Disciplinary Authority,
S.E. Railway,
Kharagpur Medinipore,
Dist. Paschim Medinipore,
Pin - 721301.

iv. The Enquiry Officer,
CEOI/GRC,

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S.E. Railway,
Kharagpur,
P.O. Kharagpur,
Dist. Paschim Medinipore,
Pin - 721301.

... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Ms. D. Das Banerjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member.

This applicant has approached the Tribunal in second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (a) The Charge Memo dated 20.4.2007 cannot be tenable in the eye of law and as such the same may be quashed.
- (b) The Order dated 28.12.2011 issued by the Disciplinary Authority cannot be tenable in the eye of law and therefore the same should be quashed.
- (c) The Order passed by the Appellate Authority cannot be stand in the eye of law and as such the order dated 14.5.2012 may be quashed.
- (d) An order do issue directing the respondents to reinstate the applicant in service and to grant him all the consequential benefits."

2. Heard both Ld. Counsel examined pleadings and documents on record. Ld. Counsel for the respondents has cited the decisions in **O.A. 625 of 2012** (Calcutta Bench) [**Sk. Anwaruddin v. Union of India & ors. (Eastern Railway)**] and **O.A. 1285 of 2006** (Jabalpur Bench) [**Sudama Prasad Kori v. Union of India & ors.**] to support their stand on mandatory recourse to alternative/statutory remedies.

3. The matter in brief is that, the applicant, a Safaiwala with the respondent authorities, was served with a major penalty chargesheet dated 20.4.2007 on the charges of :

- (i) Marrying a second time without obtaining divorce from his first wife.

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- (ii) Impersonating his second wife as his first wife in the Railway Service Pass Book.

The charges were sought to be sustained with the support of:

- (a) Clarificatory statement of the applicant before vigilance dated 26.2.2007.
- (b) Railway Service (Conduct) Rules, 1966;
- (c) Letter of Sr. DMO, H&FW, S.E. Railway, KGP dated 17.2.2007;
- (d) The applicant's pass declaration dated 8.2.2007 with four photograph;
- (e) A copy of the marriage certificate dated 30.1.2006.

Documents as prayed for by the applicant/Charged Officer were furnished to him by the respondents vide their communication dated 25.1.2007.

The applicant/Charged Officer participated in the enquiry by attending the regular hearings and filed his final defence statement.

The enquiry officer submitted his enquiry report on 28.11.2007 concluding thereby that charges leveled against the charged officer stood substantiated based on relied upon documents and the charged officer's evidence at the enquiry.

The applicant/charged officer reacted to the said enquiry report on 26.12.2007, but, the disciplinary authority, having been satisfied that the applicant/charged officer failed to maintain absolute integrity and had acted in a manner unbecoming of a Railway servant by contravening Rule 3.1(i)(ii)&(iii) of Railway Service (Conduct) Rules, 1966, imposed the penalty of removal from service with immediate effect. The applicant/charged officer preferred an appeal on 27.3.2007 but the appellate authority upheld the punishment imposed by the disciplinary authority.

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The applicant thereafter approached the Tribunal in O.A. No. 995 of 2008. The said O.A. was disposed of on 18.11.2010 and the Tribunal directed as follows:-

"12. Coming to the facts of this case, we find that charges are sought to be sustained only by examination of documents, one of them being the statement recorded in the preliminary enquiry by the vigilance official. The said vigilance official is not cited as a witness. The EO's report does not show that the applicant has been examined in respect of this statement and was given an opportunity to explain the same. The charged official has denied the contents of statements saying that it was not explained to him in his native language. The discussions also show that Disciplinary Authority/Appellate Authority have failed to consider all the points urged by him. When we apply the ratio of judgments in para 7, 8, 10 & 11 the report of the Enquiry Officer and the order of punishment cannot be sustained. They are quashed and set aside. The disciplinary authority can appoint an enquiry officer who shall proceed from the stage of examining the applicant on the evidence against him and submit his report uninfluenced by earlier findings and order of Disciplinary/Appellate Authority. It will be open to respondents to place him under deemed suspension if need be otherwise the applicant will be reinstated in service. In case he is placed under deemed suspension the decision regarding intervening period will be after conclusion of proceedings. Otherwise the applicant will be entitled to consequential benefits. The disciplinary proceedings shall be concluded within three months of the receipt of the order."

Thereafter as directed by the Tribunal, the CEOI/GRO was nominated as the enquiry officer for conducting another enquiry. In obedience to the orders of the Tribunal, the applicant was reinstated in service but kept under deemed suspension w.e.f. 21.12.2010.

Although the applicant/charged officer was notified to attend the enquiry, he did not attend the same on 30.3.2011, 12.4.2011 and 10.10.2011. Hence, given the time line as directed by the Tribunal, the respondent authorities conducted an ex parte enquiry, and, the applicant, having received the enquiry report represented on the same on 19.11.2011. The competent respondent authority thereafter issued a punishment notice for removal from service with immediate effect with grant of 2/3rd of allowable pension and allowable gratuity respectively. The concerned appellate authority, having considered the applicant/charged officer's appeal, upheld the major penalty and disposed of the appeal vide his order dated 15.12.2012.

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It is noted here that the applicant did not prefer a revisionary appeal despite statutory provisions to such effect.

4. The main contentions of the applicant to substantiate his claim for relief are that:

- (a) the clarificatory statements obtained from him were in English. The said contents were not explained in Bengali or in Hindi or in his mother tongue and hence it was not possible for the applicant to comprehend the contents of the clarificatory statement prepared on his behalf. Hence, the applicant had, in his defence statement in the disciplinary proceedings, withheld his concurrence to the contents of the pre-recorded clarificatory statement.
- (b) As his statements were recorded without any independent witness, the said statement cannot be treated as a relied upon document.
- (c) The applicant also defended himself with his averment that there is no document or evidence to prove that he had entered into any other marriage apart from that with Smt. G. Satyabati, the mother of his two children, Kumari G. Jyoti and Sri G. Mahesh.

This contentions of the applicant, namely, that there were no witnesses, there was no evidence of his second marriage and that Smt. Alima and Smt. G. Satyabati are one and the same person and his only wife, has been discussed by this Tribunal in detail while adjudicating the earlier O.A. No. 995 of 2008. Upon being satisfied that the charges were sought to be sustained only upon examination of documents, one of them being the statement recorded in the preliminary enquiry by the vigilance officer, who could not be cited as an witness, and, that the applicant had no scope of examining the same, this Tribunal had quashed and set aside the orders of the disciplinary authority dated 18.2.2008 and that of the appellate authority dated 31.5.2008. This

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Tribunal thereafter permitted the disciplinary authority to appoint an enquiry officer, who was to proceed from the stage of examining the applicant on the evidence adduced against him and to submit his report untrammelled by the earlier findings of orders of the disciplinary/appellate authority.

The respondent authorities proceeded to abide by the orders of the Tribunal by engaging a new enquiry officer and by reinstating the applicant under deemed suspension. To abide by the timeline given by the Tribunal to conclude the proceedings, the applicant was issued notice to attend hearings which, however, he chose not to attend. Rather he represented against the enquiry report, and the disciplinary authority having imposed the penalty of removal from Railway service with immediate effect with 2/3rd of eligible pension and gratuity respectively, the applicant submitted an exhaustive appeal on 17.1.2012 (Annexure A-16 to the O.A.) which was disposed of by the appellate authority upholding the said penalty.

The applicant has not been able to establish that the respondents had not complied with the orders of the Tribunal in his earlier round of litigation and also that he was not given enough opportunity to defend himself.

5. The entire genesis of the enquiry and proceedings against the applicant relates to a complaint from one G. Satyabati along with one Kumari Hemlata dated 16.1.2006. The former claimed to be his first wife and mother of their daughter, Kumari Hemlata. The complainant also alleged that she and her daughter were kept in her father's place ostensibly for treatment but was not given any financial support by her husband although they have not been officially divorced and she continues to remain as his legal wife. G. Satyabati also alleged that one

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Alima Bibi was enjoying the benefits to which G. Satyabati was entitled to having been recorded as G. Satyabati in the Railway Pass and in the medical entitlements.

6. The applicant's versions have been factually inconsistent bordering on incongruity. At annexure A-1, the applicant has declared on 8.2.2007, one Smt. G. Satyabati as his wife, two children Kumari G. Jyoti and Sri G. Mahesh as his two children. In the clarificatory statement before the vigilance (the contents of which he has subsequently denied) the applicant has claimed that he has been married only to one Alima Bibi, who was later renamed as G. Satyabati and that, although, he has three children, namely, two daughters and one son, the first daughter lives with her grandparents and that her name and photograph have been left out in the verification of pass declaration through inadvertence.

That, the complainant, G. Satyabati resides at Dongarharh separately with one Sri G. Papa Rao and that Kumari Hemlata has not been retained in maternal custody. In the clarificatory statement, the applicant admits that his first wife is one G. Satyabati, who has left him and lives with another G. Papa Rao. After her departure he waited for three years before marrying one Alima Bibi, who was renamed as G. Satyabati. The applicant, however, is willing to support his first wife and his daughter (with the consent of his second wife) in case they come to live with him at Kharagpur. The applicant admits that he was at fault in remarrying without obtaining divorce from the first wife and that he was scared to seek divorce given the belligerent aggression of the latter. The clarificatory statement has been signed in English by the applicant stating as follows:-

"The above statement has been given by me from my own knowledge and belief and without any pressure from any angle in this office. The contents of the above statement has been translated into Hindi and in Bengali language before me and it is clearly understood and signed by me."

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Surprisingly, after the issue of the charge-memorandum, the applicant did a volte-face in his written statement of defence dated 11.10.2009 denying any knowledge of the clarificatory statement as it was not explained to him in his native language and that his only certified marriage is with one Smt. Alima alia Smt G. Satyabati, who according to him is the one and the same woman. It is also important to note that the applicant has furnished in his support a marriage certificate dated 30.1.2006 wherein the applicant, Appa Rao, was stated to have married one G. Satyabati, daughter of Mustafa in 1991. Upon a close perusal of the said marriage certificate it transpires that this marriage certificate has been issued under the Special Marriage Act, 1954 implying thereby that the husband and wife whose marriage was so registered apparently belong to different faith and community. It is also noteworthy that G. Satyabati is the alias of one Alima Bibi, who has been introduced as his wife by the applicant in the Railway Pass Certificate. Considering that the complainant G. Satyabati claims to be the first wife of the applicant, renaming Alima bibi as G. Satyabati tantamounts to deliberate and conscious impersonation so as to keep the respondent authorities in the dark and to pass off his second marriage as the earlier matrimonial alliance.

7. The applicant obtained certain relief from the earlier round of litigation. Surprisingly, when a fresh enquiry was ordered and held, he refused to attend the hearings or to participate in the enquiry which amounts to complete disregard of the Tribunal's orders.

The applicant did not participate in the enquiry and, also, in his appeal dated 17.1.2012, brought forth nothing more than the plea of absence of witness, lack of evidence and violation of statutory provisions,

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all of which were taken into consideration by the Tribunal while disposing of O.A. No. 995 of 2008.

8. In the instant O.A., the applicant has not introduced any new grounds apart from those advanced in the earlier round of litigation. The respondent authorities have also argued that the applicant did not exhaust his right to statutory remedies before approaching the Tribunal in the second round litigation.

9. In the context of the above discussions, we refer to the scope of judicial review which has been laid down by the Hon'ble Apex Court in **High Court of Judicature in Bombay v. Shashikant S. Patil 2000(1) SCC 416**. The Hon'ble Apex Court while referring to **State of AP v. S.Sree Rama Rao AIR 1963 SC 1723** and **B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749**, had ruled that judicial review in disciplinary proceedings is invoked in the following circumstances:

- (a) Where there has been a violation of the principles of natural justice; or
- (b) The proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (c) The decision is vitiated by considerations extraneous to the evidence and merits of the case; or
- (d) If the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion; or
- (e) Other very similar to the above grounds.

Examined against the aforesaid ratio, we find that, in the instant matter, there has been no violation of the principles of natural justice, the statutory regulations have been adhered to, and, also in compliance with the directions of the Tribunal, extraneous considerations did not

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influence the proceedings and the conclusions could not be held to be arbitrary or capricious.

6. Accordingly, having been convinced that this is not a fit case for judicial intervention, we do not deem it fit to interfere with the orders of the respondent authorities.

7. The applicant, however, is granted liberty upon waiver of limitation, to prefer a revisionary appeal as provided for in the statute within six weeks of the receipt of a copy of this order. In the event such appeal is preferred, the competent respondent authority will decide on the same in accordance with law within a further period of six weeks and convey his decision to the applicant forthwith thereafter.

8. With these directions, this O.A. is disposed of. Parties will bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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