

(2018) 06 CAL CK 0232
In the Calcutta High Court
Case No : W.P.C.T. No. 34 of 2018

Subhan Kumar Guin

APPELLANT

Vs

General Manager, Eastern Railway & Ors.

RESPONDENT

Date of Decision : 26-06-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 06 CAL CK 0232

Hon'ble Judges : DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : Chitta Priya Ghosh, Aiswarjya Gupta, Samir Kumar Adhikari,
Priyanka Saha, Anirban Datta

Final Decision : Disposed Of

Judgement

This is an application filed under Article 226 of the Constitution of India assailing a final order dated January 11, 2018 passed by the Central

Administrative Tribunal, Calcutta Bench in the original application bearing O.A. No.350/1827 of 2017. By the order impugned to this writ application,

the prayers of the petitioner to quash and set aside the charge sheet dated March 10, 2017 and the speaking order dated November 29, 2017, were rejected.

Having heard the learned Advocates appearing on behalf of the respective parties as also after considering the facts and circumstances of this case,

we find that a charge sheet dated March 10, 2017 was issued against the petitioner in connection with the alleged commission of offence arising out of

his services under the respondent authority. The petitioner filed an original application bearing O.A. No.798 of 2017 before the Central Administrative

Tribunal, Calcutta Bench with a prayer for setting aside the above charge sheet.

After considering the prayer made by the learned Advocate appearing before the learned Tribunal on behalf of the petitioner, the above original

application was disposed of granting liberty to the petitioner to submit a comprehensive representation before the respondent authority as also with a direction upon the respondent authority to consider the same in accordance with the rules and regulations.

The petitioner thereafter submitted his representation on July 19, 2017. In the representation, the main contention of the petitioner was that although

according to the respondents, all the charges leveled against the petitioner on the basis of the charge sheet in question, had been based on a complaint

dated February 26, 2017, the disciplinary authority while framing the charges against the petitioner, neither relied upon the above complaint nor did he

wish to call upon the complainant as a witness to support the above charges. There was further prayer for supply of a copy of the above complaint to

the petitioner.

The above representation was disposed of by a speaking order dated November 29, 2017 rejecting the prayer of the petitioner made in the

representation. In the meantime, according to the petitioner, the enquiry proceeding continued and the last date of hearing of the enquiry proceeding

was October 6, 2017, which was prior to the date of disposal of his representation by the authority concerned. The above order dated November 29,

2017 passed by the respondent authority was under challenge in the original application bearing O.A. No.350/1827 of 2017 and by virtue of the order

impugned to this writ application, the above original application was dismissed by the learned Tribunal.

From the facts and circumstances of this case, it is not in dispute that the original application bearing O.A. No.798 of 2017 was disposed of by the

learned Tribunal on June 30, 2017 with the hope and trust that till the representation of the petitioner was disposed of and the result thereof

communicated to the petitioner, the respondent authority might direct the enquiry authority not to proceed further with the proceeding. It is also not in

dispute that the enquiry officer proceeded during the pendency of the representation of the petitioner.

The last date of hearing of the enquiry proceeding was October 6, 2017 and the date of disposal of his representation was November 29, 2017. It

appears from the materials on record that the petitioner repeatedly prayed for adjournment of the enquiry proceeding before the respondent authority

on the ground of pendency of his representation but the enquiry officer did not pay any heed to such prayer.

In that view of the matter, we are of the opinion that there was failure on the part of the learned Tribunal to examine the decisionmaking process of

the respondent authority in proceeding with the enquiry proceeding pending disposal of the representation of the petitioner. Therefore, the order

impugned to this writ application requires our interference and accordingly, the same stands quashed and set aside.

Though we are not inclined to allow the prayer of the petitioner to set aside the charge sheet at this stage, the enquiry report dated December 6, 2017

requires our interference and accordingly, the same also stands quashed and set aside. Leave is granted to the petitioner to submit reply to the charge

sheet within a period of 10(ten) days from date. Let there be a direction upon the concerned respondent authority for proceeding de novo with the

enquiry proceeding after expiry of 10(ten) days from date in accordance with law, in the event, the disciplinary authority is of the opinion to continue

further with the disciplinary proceeding after taking into account the reply to the charge sheet.

It is, however, made clear that we have not entered into the merits of the allegations made against the petitioner in the disciplinary proceeding, on the

basis of the charge sheet and all the points are kept open for a decision of the disciplinary authority. The writ application accordingly stands disposed

of. There will, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be given to the parties at an early date.