

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sabyasachi Bhattacharyya

And

The Hon'ble Justice Jay Sengupta

W.P.C.T. 34 of 2020

With

CAN 1 of 2020 (Old CAN 3244 of 2020)

Mrityunjoy Gouda

Versus

Union of India and others

For the Petitioner : Mr. Surojit Samanta
Mr. Debjit Samanta
...Advocates

For the Respondents : Mr. Naba Kumar Das
...Advocate

Heard on : 22nd September, 2021

Judgment on : 1st October, 2021

Jay Sengupta, J.:

1. This application is directed against a judgment and order dated 04.05.2020 passed by the Learned Central Administrative Tribunal,

Calcutta Bench in Original Application No. 350/1434 of 2019 with Miscellaneous Application No. 350/112 of 2020, thereby, inter alia, refusing to interfere with the disciplinary proceeding initiated against the present petitioner and granting liberty to him to participate at the enquiry proceeding.

2. The petitioner has been employed as a Bungalow Peon (TADK) with the South Eastern Railway since 27.09.2016. On 25.01.2017 upon completion of 120 days of continuous service, the petitioner acquired temporary status. On 28.01.2019 the petitioner preferred an application under the Right to Information Act. On 17.05.2019 the petitioner filed a first appeal in respect of his application under the RTI Act. On 04.06.2019 the petitioner's employer issued a show cause notice to him seeking explanation for the use of alleged intemperate language while preferring the first appeal under the RTI Act. The petitioner replied to the said show cause notice on 06.06.2019. On 02.07.2019 he was issued major penalty charge memorandum alleging the same use of intemperate language while filing the first appeal under the RTI Act. On 15.10.2019 the petitioner preferred an application under Section 19 of the Administrative Tribunal Act, 1985 before the Learned Central Administrative Tribunal, Calcutta Bench challenging the initiation of the departmental proceeding through the major penalty charge memorandum. On 15.09.2019 the petitioner filed a miscellaneous application since the departmental proceeding had continued due to non grant of interim order at the motion stage before the learned Tribunal. On 04.05.2020 the Learned Central Administrative Tribunal, Calcutta Bench

was pleased to reject the original application along with the connected miscellaneous application.

3. After the petitioner moved the present application before this Court, by an order dated 24.06.2020, this Court directed that the disciplinary proceedings may continue subject to the result of the writ application, any major penalty intended to be awarded can only be so done upon obtaining leave of this Court and any minor penalty may be awarded subject to the result of this case.

4. It was submitted by the learned counsels for the parties that by an order dated 07.01.2021 the disciplinary authority imposed a punishment on the petitioner by downgrading the charge memorandum from major penalty to minor penalty. As a punishment, the petitioner was imposed a minor penalty of stoppage of increment for two years with non cumulative effect. A copy of the order as communicated to the petitioner and as filed on behalf of the petitioner was taken on record.

5. Mr. Samanta, learned senior counsel appearing on behalf of the petitioner, submitted as follows. While continuing as a Bungalow Peon (TADK) under the South Eastern Railways, the petitioner filed an application under the RTI Act requesting the authority to furnish the duties and responsibilities of his said TADK in the railways service and querying whether a gazetted officer of Indian Railways can utilise a TADK for washing cloth, cooking food, cleaning residence of a gazetted officer under whose control the TADK was posted. To this, a belated and evasive reply was given by the CPIO of the Railway Board. The duties and responsibilities of TADK

were not furnished on the purported ground that no such instruction had been issued from the office. The second question was not answered on a vague pretext. Being aggrieved by this, the petitioner filed an appeal on 17.05.2019 before the First Appellate Authority under the RTI Act. In the said application, the petitioner merely stated the obvious that the belated reply showed total negligence and irresponsible attitude of the CPIO. Moreover, the CPIO did not provide with any information and rather went on to dish out some misleading and irrelevant information. But, this was treated as a serious misdemeanour on the part of the petitioner. The establishment was alarmed that a so-called lowly placed employee could come out questioning the authority in a strong language. The language used by the petitioner in the appeal under the RTI Act was neither foul nor intemperate. The charge sheet only exposes the intolerant and feudal mindset of certain persons in the establishment that they would want to punish everyone who try to question them even in respect of maltreatment of employees by the superiors. No *prima facie* case is made out to substantiate any charge whatsoever against the petitioner. Yet, charges were framed, a penalty was imposed and even the Learned Central Administrative Tribunal merely glanced through this aspect and failed to appreciate that on merits there is no case made out against the petitioner. The technical point of whether the General Manager was only empowered to act as the disciplinary authority was far too unimportant a point. The main thrust of the petitioner's case before the learned Tribunal that no *prima facie* case was made out could not be properly appreciated by the learned Tribunal.

The learned Tribunal also failed to appreciate that the petitioner had filed the application or, for that matter, the appeal under the RTI Act as a citizen of India and not in course of performing his duties as an employee of the South Eastern Railways. Therefore, for an information sought by him under the RTI Act, he could not have been charged in a disciplinary proceeding by the employer. Besides, the issuance of charge sheet and the subsequent imposition of penalty could at best be termed as command performance by the authority. Otherwise, a first appeal under the RTI Act filed by the petitioner could not have been dealt with such severity. This rendered the whole exercise absolutely bad in law.

6. Mr. Das, learned senior counsel appearing on behalf of the South Eastern Railways, submitted as follows. The writ application practically became infructuous as a final order had already been passed in the disciplinary proceeding. In passing such order, the disciplinary authority abided by the interim order passed by this Court and no major penalty was imposed. The charge sheet was quite rightly issued by the Assistant Commercial Manager. The intemperate language used by the employee in his first appeal under the RTI Act was quite rightly dealt with appropriate seriousness.

7. We heard the learned counsels appearing on behalf of the parties and perused the application and the connected application.

8. For the sake of clarity, the queries made by the petitioner in his RTI application are set out as under:

“2-1:-Please furnish the duties and responsibilities of TADK in Railway service.

2-2:- Whether a gazetted officer of Indian Railway can utilize a TADK for washing cloth, cooking food, cleaning residence of a gazetted officer under whose control the TADK is posted.”

9. The evidently noteworthy reply given by the CPIO by a communication dated 06.05.2019 is worth referring to as under:

“Item no. 1: As your RTI was transferred to this CPIO after a long delay, reply could not be sent to you within the mandated period of 30 days and the same is regretted. No such instruction has been issued from this office.

Item no. 2: As per Section 2(f) read with 2(j) of RTI Act, 2005, the public authority is required to provide information which is available in material form and is not bound to either create/generate information or to interpret or deduce conclusions from the information/material held in its possession.”

10. Thereafter, on 17.05.2019 the petitioner preferred first appeal under the RTI Act. The relevant portion of the body of the application is also quoted below:

“I had submitted my notice under RTI Act 2005 on 28.01.2019 but Your CPIO-38 had submitted reply on 06.05.2019, that means, after lapse of 03 months although he admitted in writing that he had received and registered my notice on 14.02.2019. This shows total negligence and irresponsible attitude of your CPIO-38 (Shri Neeraj

Kumar). You should take disciplinary action against that CPIO for his failure along with fine of Rs. 250 per day, since the expiry of stipulated period for not providing information within stipulated period of 30 days. Moreover he had not provided any information rather he had provided some misleading and irrelevant information under item-1 and under item-2. The reply tantamounts to denial of information.”

11. It has become a deep-rooted malaise in our society that often individuals who attain certain positions in life, especially in the services with the Government or Governmental organisations, tend to treat the purportedly lowly placed employees of such organisations engaged to assist them as their personal servants. Some such abominable acts embarrass us when they are brought out in public by the media or otherwise. However, bulk of those abusive instances stay behind the public gaze and are continued with impunity. This is perhaps a rare instance where one such citizen of India who happened to work as a TADK with the South Eastern Railways, mustered enough courage, at least to pose questions in this regard to the authorities and for merely doing so, he was taken to task by a section of the bureaucracy, which would want no one to question such inhumane, feudal and absolutely illegal practices.

12. As is evident from the reply given by the CPIO to the petitioner, not only was the reply belated, but it was also devoid of any substance. By couching the words in some convoluted logic, effectively the CPIO refused to give any answer to the most pertinent second query. In respect of the first

query also, the CPIO simply said that no instructions had been issued from the office in this regard. This made out a perfect case for preferring an appeal, which the petitioner did.

13. The language used in the appeal under the RTI Act is far from intemperate or foul. This is the least that an aggrieved individual, a citizen of India, is supposed to reflect after he is denied information that he sought under the RTI Act.

14. The charges levelled against the petitioner are devoid of any merits. It is abundantly clear that no intemperate or foul language had been used by the petitioner in his first appeal under the RTI Act. Therefore, no penalty could have been imposed on him in the departmental proceeding.

15. Besides, the petitioner could not have been hauled up by the disciplinary authority of his own department for even an alleged indiscretion in choosing language for filing a first appeal under the RTI Act as he was making such application under the RTI Act not as an employee of the concern, but as a citizen of India. The act of the concerned respondents of hounding the petitioner for performing his duties as a citizen of India is absolutely reprehensible. The entire exercise seems to be a tainted one and thus, cannot be sustained in the eye of law.

16. Accordingly, we set aside the impugned order passed by the Learned Central Administrative Tribunal and further, quash and set aside the disciplinary proceeding initiated against the present petitioner including the imposition of penalty by an order dated 07.01.2021.

17. We can understand that a disciplinary authority can possibly shell out a command performance, albeit wrongly. But, it pains us more to find that even the Learned Central Administrative Tribunal failed to look at the entire issue in the proper perspective. We would like to make it clear, which the learned Tribunal apparently overlooked, that the proceeding initiated against the present petitioner in respect of his first appeal under the RTI Act and the consequent imposition of penalty appear to have been actuated by malice for merely asking pertinent questions as regards maltreatment of TADKs by their superiors.

18. Therefore, besides quashing the impugned order and the penalty imposed on the petitioner, we direct the contesting respondent no. 7 to pay Rs. 20,000/- as costs of litigation to the petitioner within four weeks from this date.

19. The General Manager, South Eastern Railways, Garden Reach, Kolkata, through whom the service of this application has been effected on the Union of India, is requested to organise appropriate orientation courses for the employees including the managerial staff for sensitising them on the rights of employees vis a vis the fundamental rights of citizens as enshrined in our Constitution.

20. With these observations, the writ application and the connected application are disposed of.

21. The Registry is directed to send a copy of the order forthwith to the General Manager, South Eastern Railways, Garden Reach, Kolkata.

22. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)

I agree

(Sabyasachi Bhattacharyya, J)

LATER

After passing the judgment, learned counsel for the respondent-Union of India has prayed for stay of operation of this order. The same is considered and refused.

As prayed for, liberty is granted to the petitioner to put in the court fees by October 4, 2021.

Let this order be treated to be a part of the judgment delivered earlier today.

(Jay Sengupta, J)

I agree

(Sabyasachi Bhattacharyya, J)