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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1924/2002

New Delhi this the 18th day of March, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Chander Bhal,
S/o Shri Subedar
Ex. Substitute Loco Cleaner
Under Loco foreman, Moradabad

... Applicant

(By Shri B.S. Mainee, Advocate)

vs.

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi
2. The Divisional Rly. Manager,
Northern Railway,
Moradabad.
3. The Senior Divisional Mechanical Engineer,
Northern Railway,
Moradabad. Respondents

(By Shri Rajinder Khatter, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant (Chander Bhal) joined the Northern Railway at Moradabad as casual labour. He applied for the post of Substitute Loco Cleaner and was called for an interview. In accordance with the instructions of the Railway Board while appointing any person on the basis of his claim of previously working as casual labour, the employing supervisor must satisfy himself about the genuineness of his

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previous working. In accordance with the said instructions, the genuineness of the working certificate has been verified and the applicant had been appointed as Substitute Loco Cleaner.

2. While working as Substitute Loco Cleaner, the Assistant Mechanical Engineer, Northern Railway, Moradabad served a memo of charge-sheet dated 4.3.1991 on the applicant for major penalty alleging that the applicant managed to secure the employment as a Substitute Loco Cleaner under the Loco Foreman, Moradabad stating that he had worked under the Inspector of Works Balamau from 8.9.1977 to 14.4.1982 and this fact was not supported by any documents. It was inferred that the period of working of the applicant from 9.8.1977 was forged. The applicant had contested the claim and was even placed under suspension and an inquiry officer was nominated. The applicant had sent a representation for supply of documents which reads as under:-

- "(i) A copy of the Report on the basis of which the charges have been levelled against the applicant.
- (ii) Copy of the Original Casual Labour Card on the basis of which the applicant was appointed.
- (iii) Copy of the Casual Labour Register from 9.8.77 to 14.4.82 in which working period of the applicant was available.
- (iv) Copy of the skeleton pay sheet of the relevant period on the basis of which salary of the applicant was charged and disbursed.

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- (v) Copy of the Verification Report of I.O.W. which was submitted at the time of screening.
- (vi) Copy of the final result of screening etc. a copy of which is annexed hereto and marked as Annexure A-7."

3. By virtue of the order so passed, the applicant had been dismissed from service on the ground that he secured employment on production of forged documents. As appeal even had been dismissed.

4. On an earlier occasion, he preferred OA No.1193/1993. The same had been dismissed by this Tribunal on 20.9.1999. The applicant preferred Review Application No.223/1999. This Tribunal had allowed the same on 24/5/2001 and passed the following order:-

"7. In the facts and circumstances of the case, the Review Application is partly allowed to the extent that the impugned order passed by the appellate authority dated 13.11.1992 is quashed and set aside as it is a non-speaking order. That authority is directed to pass a reasoned and speaking order, taking into account the relevant provisions of law, including Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 and Instructions, and after giving a reasonable opportunity to

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18

-4-

the applicant to be heard personally. That authority shall pass necessary order within three months from the date of receipt of a copy of this order, with intimation to the applicant."

Thereafter a fresh order had been passed by the appellate authority. By virtue of the present application, quashing of the order so passed is being claimed.

5. In the reply filed, the application has been contested. It has been pointed that the applicant had never worked under the Inspector of Works Balamau. He submitted a forged casual labour working certificate which was shown to be signed by Shri S.P.Jutla, the then Inspector of Works Balamau. Later, on verification Shri Jutla had denied the signatures. The applications were invited for the post of Substitute Loco Cleaner. The applicant had fraudulently applied for the same though he was not eligible. The fraud could not be detected at an earlier stage as all the authorities i.e. the appointing authority, the then APO, verifying authority Shri B.K.Dass, the then DPI had colluded and gave appointment to the applicant on his forged casual labour working certificate. It is asserted that the fact that the certificate was

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forged cannot be re-agitated because in the earlier OA No.1193/1993, this fact had been accepted. So far as the Muster-sheet and paid vouchers are concerned, the respondents claim that they were not available because they were weeded out being time barred. The live casual labour register was declared unauthentic by the vigilance branch. Shri S.P.Jutla was the sole witness available and he had denied his signatures on the casual labour card. In this process, it is claimed that the application is without any merit.

6. The first and foremost plea raised in this regard was that the casual labour working certificate was forged has already been ^{adjudicated} ~~reflected~~ by this Tribunal in OA No.1193/1993 and, therefore, this fact cannot be re-agitated. To keep the record straight, we mention the said facts all over again. In OA No.1193/1993, the following findings have been recorded:-

"4. In so far as the non-production of documents, and the non-summoning of Shri B.K.Das are convened, applicant has not taken these grounds in his appeal dated 12.8.92 (Annexure A-6) nor indeed in the Para 5 of the O.A. containing the grounds for relief, and this is clearly an after thought. In regard to the evidence of Shri H.O.Agarwal, it is true that he has said that the signature on the casual labour card appeared to be that of Shri S.P.Julka, IOW, Balamau, but Shri Julka himself who was PW-1 has denied that the signature on the casual labour card was his. This statement was made on 2.2.92 in the presence of applicant, as is clear from the

As Agarwal

I.O.'s report, and there is nothing to establish that this statement has been shaken in cross-examination.

5. Under the circumstances, if the I.O. has believed the statement of PW-1 Shri Julka and disbelieved the statements of DW's S/Shri Lakshmi Narain and H.O. Agarwal, it cannot be said that such a conclusion necessarily is illegal or arbitrary. The Tribunal in exercise of its power of judicial review is not acting as a Court of appeal and cannot reappreciate the evidence. In the light of Shri Julka's statement denying the signature on the Casual Labour Card to be his, it also cannot be said to be a case of no evidence, more particularly in the absence of materials furnished by applicant to establish that Shri Julka's testimony was motivated and tainted."

If the matter had ended here, the plea of the respondents would have prevailed but in the review application that had been preferred, the order of the appellate authority was set aside and the matter was remitted for passing a reasoned and speaking order taking into account the relevant provisions of law. Once the order of the appellate authority had been set aside, necessarily, the earlier order had been reviewed and findings, if any, in this regard would also lose its significance. Consequently, it cannot be held in the facts of the present case, keeping in view the review application that the said findings cannot be allowed to re-agitated.

7. It is in this back-drop that the learned counsel for the applicant contended that a fair opportunity during the course of the disciplinary

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proceedings had not been granted. Our attention was drawn towards a Full Bench decision of this Tribunal in the case of Shri Lal Singh v. The General Manager, Northern Railway, Northern Railway, New Delhi and anr. in OA No.486/1990 rendered on 10.8.1993. Therein also the concerned person had been charged of securing employment by producing fabricated casual labour service card. After the enquiry, he was dismissed. He had asked to get the muster roll of the concerned office to prove his case. The same was not produced. This Tribunal had held that a fair opportunity had been deprived and the orders so passed were quashed. Identical is the position herein. The applicant, as already referred to above, wanted production of the certain records which were not provided.

8. On behalf of the respondents, it was informed that the casual labour register and some of the other documents had been destroyed/weeded out and, therefore, they could not be produced. To that extent, we can only agree upto the point that if the record has been destroyed, it cannot be directed to be produced. All the same, the applicant further wanted examination of certain witnesses, namely Shri H.O. Aggarwal, Inspector of Works, Balamau, who had verified the working period of the applicant and Shri B.K. Das, D.P.I., Moradabad who had attested the verification in this regard.

AS Aggarwal

39

The reply of the respondents in the counter-affidavit indicates that they supplied the documents that were available and only Shri H.O. Aggarwal was examined and the other witness was said to be not examined because he had submitted a false verification report.

9. At this stage, we are not expressing any opinion in this regard but suffice to say that whenever there are departmental proceedings, a fair opportunity to examine the witnesses has to be granted. It is always for the alleged delinquent to decide as to what appropriate defence he has to produce. If the defence is irrelevant, the authority concerned can refuse examination of such witnesses but in the present case, the witnesses that he wanted to produce and examine cannot be declared to be irrelevant. It is a different matter whether they are believed or not. Consequently, at this stage holding that the evidence of the concerned witnesses was relevant and they were not allowed to be examined, the necessary consequence would be that the applicant must be held to be not granted the fair opportunity to contest the departmental proceedings.

G. Aggarwal

20

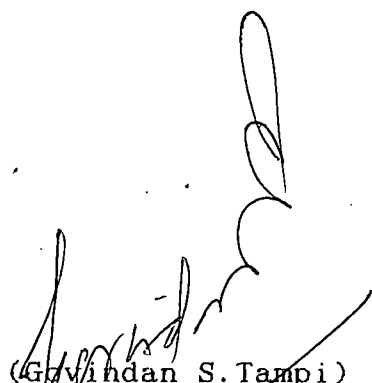
-9-

9. Resultantly, we make the following order:-


- (a) the present application is allowed and the impugned orders of the disciplinary authority as well as the appellate authority are quashed;
- (b) the disciplinary authority, if so advised, may direct initiation of the departmental proceedings from the stage, the applicant wanted examination of certain defence witnesses; and
- (c) if some of the documents claimed by the applicant are available, they should also be supplied to him.

No costs.

Announced.


(Govindan S. Tampi)
Member (A)

/sns/


(V.S. Aggarwal)
Chairman