

Central Administrative Tribunal
Principal Bench
New Delhi

6

O.A. No. 1329/95

Decided on 24.8.1999

Jai Pal

... Applicant

(By Advocate: Shri B.S.Mainee)

Versus

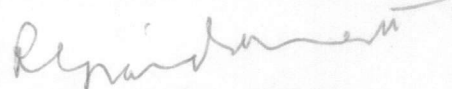
Union of India & Ors. ... Respondents

(By Advocate: Shri P.S.Mahendru)

CORAM

HON'BLE MR. JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, MEMBER (A)

1. To be referred to the Reporter or Not? Yes *no*
2. Whether to be circulated to other outlying Benches of the Tribunal or not? No



(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

7

ORIGINAL APPLICATION NO. 1329/95.

Tuesday, this the 24th day of August, 1999.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-
Chairman,
Hon'ble Shri J.L.Negi, Member (A).

Jai Pal,
Ex. Substitute Loco Cleaner,
under Loco Foreman, Northern
Railway Lakser.

... Applicant.

(By Advocate Shri B.S.Mainee)

Vs.

Union of India : Through
1. The General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
Moradabad.

... Respondents.

(By Advocate Shri P.S.Mahendru)

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard Shri B.S.Mainee the learned counsel on behalf of the applicant and Shri D.P.Kahatriya, the learned counsel for the respondents. We have also perused the enquiry file made available to us by the learned counsel for the respondents.

2. The applicant was working as a substitute Loco Cleaner in the Northern Railway. He came to be appointed on the basis of a Casual Labour card said to have been produced by him. It appears that the administration received some complaints that there was a big scam of

...2. pr

②

in appointment to Group 'D' employees in the Railways on the basis of fake or fabricated casual labour cards. Then the Railway Vigilance enquired into the matter. It appears that certain instances came to the notice of the Administration that there was a big scam in which many employees with fake Labour Card came to be appointed in the Railways. According to the administration, the case of the applicant is one such. Therefore, the administration issued a charge sheet against the applicant on 24.5.1991 alleging that he has obtained appointment in the Railways by producing a fake Casual Labour Card. The applicant sent a reply to the Charge Sheet and demanded certain documents and he also wanted certain witnesses to be examined on his behalf. There was no reply either by the Enquiry Officer or by the Disciplinary Authority. Then, the enquiry proceeded. One witness came to be examined during the enquiry. The defence request for summoning two defence witnesses and production of ^{certain} documents came to be rejected by the Enquiry Officer. On the basis of the available evidence and materials on record, the Enquiry Officer gave a report dt. 20.1.1993 holding that the charges are proved. A copy of the enquiry report was furnished to the applicant, who in turn submitted a representation against the findings of the Enquiry Officer. Then the Disciplinary Authority after perusing the entire materials passed an order dt. 26.10.1994 holding that the charges are proved and imposed a penalty of removal from service. Then the applicant preferred an appeal and the Appellate Authority by order dt. 5.5.1995 dismissed the appeal.

...3. *Ch*

9

Being aggrieved by these orders the applicant has approached this Tribunal.

3. The applicant's case is that there was no regular and proper enquiry in the disciplinary case. The witnesses cited by him were not allowed to be examined by the Enquiry Officer. The documents sought for by him for the purpose of defence were not produced by the Administration. The applicant was denied fair opportunity of defending himself in the enquiry and hence the whole enquiry stands vitiated. It is also the applicant's case that the orders of the Disciplinary Authority and the Appellate Authority are bad, since they are non-speaking orders and contentions taken by the applicant are not referred to in the orders. On merits, it was submitted that the applicant has not obtained any such job by a fake card and he is denied opportunities to prove his innocence and therefore the applicant prays that the impugned orders may be quashed and he may be reinstated in service with full back wages.

4. The respondents in their reply have denied of the many allegations in the application. It is stated that the applicant had obtained employment by producing the forged or fake document viz. casual labour card. That the enquiry has been conducted as per rules. It is admitted that applicant made a request in his representation seeking certain documents. As far as the examination of two witnesses are concerned it is stated that since they were involved in the scam their examination has been rightly rejected by the Enquiry Officer. In view of the

...4.

10

evidence of Mr.S.P.Jutla the Prosecution case stands proved viz. that applicant had obtained job on the basis of a fake casual labour card. As far as the production of casual labour register is concerned, since it was not a genuine document its production was rightly rejected by the Enquiry Officer. It is therefore, stated that no case is made out for interfering with the impugned orders.

5. Among other grounds, the learned counsel for the applicant mainly stressed on the point that this is a case where there is violation of principles of natural justice and violation of Article 311 of the Constitution of India since applicant has been denied sufficient and proper opportunity to defend himself in the enquiry, In particular, he pointed out that inspite of number of requests made by the applicant for production of certain documents and for examination of two defence witnesses, the same were rejected and therefore the applicant has been denied fair opportunity of defending himself in the enquiry. On the other hand, the learned counsel for the respondents maintained that in the face of the evidence of Mr.Jutla nothing more need to be proved in the case and the request of the applicant for production of documents and examination of two witnesses has been rightly rejected by the Enquiry Officer.

6. There is no dispute that applicant did demand production of certain documents for the purpose of his defence. The first such written request by the applicant is in his letter dt. 5.6.1991, which is at page 19 of the paper book. In this letter the applicant has called

...5.

RW

upon the administration to produce certain documents and also to examine certain witnesses as prosecution witnesses. The request of the applicant that some additional witnesses should be examined as prosecution witness cannot be a legal demand and no delinquent can force the administration to examine some witnesses which are not required by the prosecution. Therefore, that request may not be a proper or legal demand. Though the applicant has sought for certain documents to prove his defence, there was no reply to this letter. Then, we have one more such letter at page 20 of the paper book, where again the applicant has called upon the administration to produce certain documents. Even in the defence ~~brief~~ submitted after the enquiry a grievance is made that the documents called for by the applicant were not produced in the enquiry and this vitiated the enquiry. Neither the Disciplinary Authority nor the Enquiry Officer have sent any reply to the applicant regarding these representations, but however, in the Enquiry Report, which is at page 26 of the paper book, the Enquiry Officer has observed that the request of the applicant for the examination of D.K.Das and A.P.Srivastava as witnesses has been declined since these officials are involved in the scam of bogus appointments on the basis of false documents. The Enquiry Officer had no such right to deny examination of ^{defence} witnesses on the ground that those two witnesses are also involved in the scam. On the face of it, the reasoning appears to be arbitrary. If the prosecution can examine Mr.Jutla who is also facing a departmental enquiry in respect of the same scam, then why the defence

12

should be denied opportunity to examine D.K.Das and A.P.Srivastava as defence witnesses. As rightly argued on behalf of the applicant, after the examination of those two witnesses, it was open to the Enquiry Officer or Disciplinary Authority either to accept their evidence or reject their evidence. Whether the evidence of these witnesses were reliable or not was not in question at that time. The only question to be considered at that stage was whether their evidence was relevant or not. But, unfortunately, the Enquiry Officer missed the point and rejected the request on the ground that their evidence is tainted or may not be reliable.

7. Then, coming to the documents sought for by the applicant, the Enquiry Officer makes only mention of the casual labour register. He says that since the register is found to be tainted document in view of the vigilance enquiry the production of document was denied. He has not stated anything about other documents sought for by the applicant in his representations. One of the documents sought for by the applicant is the pay record or pay register for the relevant period during which he has alleged to have worked as a casual labour. He has also asked for attendance register for the said period. These two documents would have been crucial or whether clinching / the entries in the casual labour card were fake or genuine. His attendance register would have showed that the applicant had put in attendance and worked during the period and the pay register would have showed that the applicant had received pay during those months, then it would have been a good defence to

...7.

13

the applicant and even it would have proved the prosecution case. In either case, these two documents were vital documents to prove either the case of the prosecution or the defence. Unfortunately, the Enquiry Officer has not stated anything about ~~anything~~ about these two documents in his enquiry report. His reasoning regarding non-production of casual labour register is also not correct, since the document was very relevant to decide whether the applicant's name had been shown in the casual labour register with necessary details regarding period of work etc. Then after the enquiry, the Enquiry Officer could^{not}/have placed any reliance on the register on the ground that it is tainted, but at the time of production of document the question will be whether the document will be relevant for the enquiry or not.

8. Therefore, we find that the applicant's request of production of documents and production of witnesses have been rejected by the Enquiry Officer and applicant's defence has been materially prejudiced. In such a situation, there is violation of principles of natural justice and violation of Constitutional Mandate under Article 311 of the Constitution where every delinquent must have fair opportunity of defending himself. The learned counsel for the applicant invited our attention to some of the decisions bearing on the point.

In ATR 1986 (2) SC 186 (Kashinath Dixit Vs. Union of India & Ors.), the Supreme Court had occasion to consider a similar question. In that case certain

...8. *fm*

14

documents were asked for by the delinquent official which were not produced. In fact, in that case the Enquiry Officer had even ordered that the delinquent official can have inspection of the documents, but the delinquent was not given facility of noting the details of the documents through a Stenographer. The Supreme Court observed that in view of the denial of the copies of documents or sufficient and fair opportunity of copying the documents through a Stenographer there was violation of Article 311 (2) of the Constitution of India and the whole enquiry stands vitiated. The Supreme Court has observed that the appellant has been denied reasonable opportunity of defending himself and on that account the Disciplinary Enquiry becomes null and void.

A Full Bench of this Tribunal in the case of Lal Singh Vs. General Manager, North-East Railways had occasion to consider a similar point in a case of obtaining job on a fabricated casual labour card. In that case also, the allegation was that the delinquent official had obtained employment by false entries in the Casual Labour card about previous service as a casual labour. In order to show that the entries in the casual labour card was genuine, the delinquent official wanted the muster roll for the period when he had worked as a casual labour. But, the document was not produced during the enquiry. The delinquent could not have produced the document since it was in the custody of the administration. In view of the non-production of the document, the Full Bench observed that the enquiry is vitiated since there was no sufficient opportunity

15

to the delinquent to prove his innocence. On that short ground the enquiry proceedings came to be quashed.

In a case reported in 1999 (1) ATJ 417 (Chatrapal Vs. Union of India & Ors), a Division Bench of the Principal Bench of this Tribunal in an identical case of obtaining job in Railways on the basis of fake casual labour card found that the disciplinary enquiry stands vitiated due to refusal to examine defence witnesses by the Enquiry Officer. The Division Bench pointed out that the question the Enquiry Officer was to decide was whether those witnesses were relevant or ^{not} and not that witnesses were reliable or not.

The learned counsel for the applicant also placed before us a recent unreported judgment of a Division Bench of this Tribunal dt. 22.8.1998 in O.A. 1358/95 in the case of (Raj Karan Vs. The General Manager & Anr.), where also it is an identical case of obtaining job in Railways on the basis of a fake labour card. That was also a case where Mr.S.P.Jutla was the sole witness examined on behalf of the prosecution like the present case. In that case also there was a request of examination of defence witness which was declined by the Enquiry Officer. After referring to law bearing on the point, the Division Bench observed in para 7 as follows :

"We are in respectful agreement with the above observations. We find in the present case an additional factor, in that the respondents allowed Shri S.P.Jutla, ex. I.O.W. Balamau to appear as the main prosecution witness and the enquiry officer relied on the evidence of this witness even though he was facing an enquiry; on the other hand, the defence witnesses were not allowed on the ground that some of them were involved in conspiracy and therefore were not

...10.

16
reliable in the eyes of the Railway Administration. We consider that the refusal of the respondents to allow copies of the documents for inspection sought for by the applicant and the refusal to examine the defence witnesses as cited by the applicant on the ground that they were not considered reliable by the Railway Administration is sufficient in itself to invalidate the disciplinary proceedings as the same constituted denial of proper opportunity and natural justice to the applicant."

It is therefore seen that the above observations apply directly to the facts of the present case. There also Mr. Jutla was examined as a prosecution witness, though he was facing departmental enquiry in respect of the same scam. But, the request for the defence witness was rejected on the ground that defence witnesses were involved in the scam. Therefore, the facts are identical to the facts of the present case. The Division Bench held that the enquiry is vitiated and order of punishment came to be set aside.

9. After going through the facts and circumstances of the case, we find that in the present case there is denial of fair opportunity to the applicant to defend himself in the enquiry in view of non-production of documents and non-examination of defence witnesses. Therefore, the enquiry stands vitiated and the order of penalty cannot be sustained.

Now remains the question as to what order should follow. Here is a case where there is serious allegation against the applicant of obtaining job on a fake or forged labour card. Whatever the lapse on the part of the administration may be, we cannot compromise with the glaring allegations against the applicant. Therefore, we are not inclined to foreclose any further action that may be taken by the administration

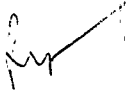
17

in continuing the enquiry against the applicant provided they observe the principles of natural justice in giving opportunity to the applicant to defend himself in the enquiry.

As far as reinstatement is concerned, normally where an order of removal from service is set aside reinstatement is the rule. But, whether in a case where there is serious allegation against the applicant about obtaining job by producing fake labour card reinstatement cannot be ordered? We give liberty to the Administration to complete the enquiry and pass final orders in the disciplinary case. It is open to the Disciplinary Authority to reinstate and continue the applicant in the post or it is open to him to pass orders to keep the applicant under deemed suspension from the original date of removal.

10. In the result, the application is allowed as follows :

- 1) The impugned orders dt.26.10.1994 passed by the Disciplinary Authority and the order dt. 5.5.1995 passed by the Appellate Authority are hereby set aside.
- 2) The matter is remanded to the Disciplinary Authority to take a decision whether to proceed with the enquiry and if so he can appoint an Enquiry Officer to conduct the enquiry. The Enquiry Officer can proceed on the basis of evidence already on record and record further evidence that may be produced by the Administration and then record defence evidence. In such a case, the applicant should be given fair and sufficient opportunity to defend himself in the enquiry including the production of relevant documents and examination of relevant witnesses.
- 3) The applicant shall be reinstated immediately.



18

But, the Disciplinary Authority is given liberty either to continue him in the post or to keep him under deemed suspension from the date of original order of removal from service subject to continuing with the disciplinary enquiry according to law.

- 4) Since this is a case of charge sheet of 1991, the Disciplinary Authority should take a decision one way or the other viz. to proceed with the enquiry or not within a period of two months from the date of receipt of copy of this order and in case he decides to continue the enquiry then the enquiry should be expedited and to be disposed of as early as possible. In case the Disciplinary Authority decides to continue the enquiry and keeps the applicant under deemed suspension, then the applicant will be entitled to subsistence allowance as per rules from the date of deemed suspension 26.10.1994 till the enquiry is concluded and final orders are passed.
- 5) All contentions on merits are left open.
- 6) In the circumstances of the case, there will be no order as to costs.

J.L. Negi
(J.L.NEGI)
MEMBER(A)

R.G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.