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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1724/95

New Delhi this the 3rd Day of December 1998

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri Raja Ram
S/o Shri Badri Parsad
Ex-Substitute Loco Clearner
Under Loco Foreman, Northern Railway,
Lakshar.

R/o H.O. B-259, Karan Vihar III,
Kiradi III, Nagnoli, New Delhi

Applicant

(By Advocate: Shri B.S. Mainee)

-Versus-

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 B.K. Agarwal)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

This is yet another case of a forged Casual Labour Card under office of IOW/Balamau. The applicant was appointed in 1978 as a Substitute Loco Cleaner on the basis that he had worked under IOW/Balamau from 15.6.1978 to 30.4.1982. In 1991, he was served with a chargesheet, Annexure A3, stating that with the connivance of the applicant a forgery was committed as the signatures of IOW/Balamau were found to be forged. The charges were held to be proved in the subsequent inquiry leading to the impugned order of the disciplinary authority by which the applicant was removed from service. The appeal filed against the order of the disciplinary authority was also rejected. Aggrieved by these two orders, the applicant has come before the Tribunal.

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2. The grounds taken by the applicant, in brief, are that the chargesheet against him is vague, that he was denied proper opportunity to be heard as the documents asked for by him and the defence witnesses called by him were not produced.

3. The respondents in the reply have stated that the applicant had been called for interview for the post of Substitute Loco Clearner on the basis of his application but it was found subsequently that he had submitted a fabricated and forged certificate. The Inspector who had given a false report of verification on the false certificate has also been issued a major penalty chargesheet. They submit that the relevant documents were supplied to the applicant. As regards the non production of the witnesses, they state that they were not cited by the prosecution and in any case these witnesses were themselves facing disciplinary proceedings and were therefore not reliable.

4. We have heard the counsel on both sides and gone through the record. The Inquiry Report dated 13.3.1992 is entirely on the basis of the evidence of the prosecution witness Shri S.P. Jutla. The Inquiry Report records as follows:

"I. The prosecution witness Shri S.P. Jutla, IOW/BLM presently working at SPN deposed that the signatures over the Casual Labour Card as well as on application which was submitted by the Charged Officer for seeking appointment as Loco Clearner are not his signatures and these signatures are forged and fabricated one".

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5. The learned counsel for the respondents Shri B.K. Aggarwal, submitted that the main charge against the applicant was that he obtained the employment on the basis of a forged certificate. As the person who had certified the working period of the charged officer stated that these were not his signatures, the charge was proved and no further evidence was required. According to Shri B.K. Aggarwal, if the applicant wanted to rebutt Shri S.P. Jutla then it was for him to produce his defence witnesses and material. We find that the charged official vide his letter dated 12.6.1992, Annexure A5, had asked for the following documents and witnesses.

- 1) Live casual labour register and casual labour Register in which the details of appointment are mentioned have not been produced before inquiry for cross examinations.
- 2) Shri Hari Ram Agarwal IOW/Blu who verified the working days on the form of the undersigned. He should be produced for cross examinations because he is very closely related to this DAR case.
- 3) Shri B.K. Dass who has attested the working period of the undersigned under his clear signature on the said form is also required to be produced for cross examinations.
- 4) Shri Laxmi Narayan office Clerk of Blu who was the custodian of the above record in the DAR case and very closely related to this case is also desired for cross examinations in this case".

To this the inquiry officer replied as follows vide his letter dated 18.6.1992.

"Item No.1: The record in question was seized by the Vigilance Organisation of Hd. Qrs. Officer, New Delhi.

Item No.2 to 4: The prosecution does not feel necessity to produce Shri H.O. Agarwal, IOW/BLM. Shri B.K. Dass,

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D.P.I. and Sri Laxmi Narayan as prosecution witness as they are not listed P.Ws."

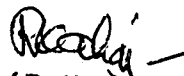
6. We are in agreement with the arguments advanced by Shri B.S. Mainee, learned counsel for applicant that the record sought for by the charged official was in the custody of the respondents and only they could have produced the documents. We find that these documents sought by the applicant were relevant documents as they could have established whether or not the applicant had actually worked during the period claimed by him in the certificate. For the Inquiry Officer to say that the documents had been seized by the Vigilance Branch was to beg the question; it was for him to get the documents from the Vigilance Branch and to have them produced. Similarly, to say that the witnesses asked for by the charged official were not listed as prosecution witnesses is also not sufficient as they being Government servants, the Inquiry Officer had to ask them to appear in the inquiry. In a similar case of Raj Karan Vs. General Manager, Northern Railway and others, O.A. No.1356/95, a co-ordinate Bench, of which one of us (Shri R.K.Ahooja) was a Member held that the refusal to examine the defence witnesses and to examine relevant documents constitutes a grave lacuna in the disciplinary proceeding.

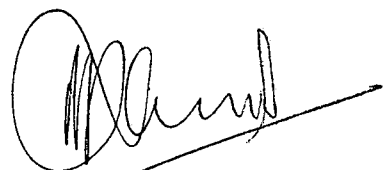
7. We find that in this case also the non examination of the material witnesses and the non production of the document on the specious excuse that these documents were with the Vigilance Branch constitutes denial of natural justice.

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8. In the normal course our directions would have been to the respondents to reinstate the applicant with liberty to take departmental enquiry from the stage of supply of a copy of the enquiry report. However, as was held in a similar case Shri Ram Saran Lal Vs. Union of India & Others (OA No. 1844/92, decided on 9.5.1997) since there has been an inordinate delay in disposal of this OA, for no fault on the part of the applicant, it would not be just or expedient to direct a fresh enquiry from the stage of supply of a copy of enquiry report. In the case of Ram Saran Lal (Supra) reinstatement was directed but without entitlement to claim back wages for the period between the date of dismissal to the date of reinstatement. It was also directed that the applicant would not be entitled to any seniority, etc. because in the meantime many persons might have been promoted and if the seniority of the applicant is directed to be restored, it is likely to create unnecessary problems and hardship to other employees who are not before us. Considering that period of four years has elapsed since the removal of the applicant, we feel that, in the interest of justice, the same directions could be given in the present case.

9. We accordingly allow the OA and quash the impugned orders.


(R.K. Ahooja)
Member(A)


(A.V. Haridasan)
Vice Chairman (J)

Mittal