

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(6)

O.A.NO.2010/95

New Delhi, this the 26th day of August, 1999

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

Sh. Gauri Shanker, S/O Sh. Badri, Ex.  
Substitute Loco Cleaner, Northern  
Railway, Lakser (UP).

\*\*\*\*\*Applicant.

(By Advocate: Mr.B.S.Mainee)

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Union of India: Through

1. The General Manager, Northern  
Railway, Baroda house, New Delhi.

2. The Divisional Railway Manager,  
Northern Railway, Moradabad (UP).

\*\*\*\*\*Respondents.

(By Advocate: Mr. B.S.Jain)

O R D E R (ORAL)

By Hon'ble Mr. Justice R.G.Vaidyanatha, VC (J)

This is an application filed by the applicant challenging the disciplinary action taken against him. Respondents have filed their reply. We have heard Mr.B.S.Mainee, counsel for applicant and Mr. B.S.Jain, counsel for respondents.

2. At the relevant time, the applicant was working as Substitute Loco Cleaner in the Northern Railway. He came to be appointed on the basis of his earlier service as casual labour. It appears that the administration received some complaints that there was a big scam in appointment to Group 'D' employees in the Railways on the basis of fake and fabricated casual labour cards. Hence, the Railways vigilance conducted some enquiry. On that basis, charge sheets

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were issued to number of officials including the applicant. The charge sheet dated 21.5.91 was issued against the applicant. The allegation is he has obtained job in the Railways on the basis of fabricated or forged documents.

3. The applicant did not file any defence to the charge sheet and enquiry officer was appointed. Then, the applicant made number of representations after receiving the charge sheet for production of certain documents and examination of several more prosecution witnesses. But the administration rejected the request of the applicant for inspection of some documents and rejected the demand of the applicant for other documents as being no relevant and not available in the office of the disciplinary authority. Request for additional witness as prosecution witness was rejected. During the course of the enquiry, the then Inspector of Works, Mr. S.P.Jutla was examined. The applicant did not examine any defence witnesses. The enquiry officer prepared a report dated 4.1.93 holding that the charge is proved. The copy of the enquiry report was furnished to the applicant who made a representation against it. Then, the disciplinary authority by order dated 11.11.94 held that the charge is proved and imposed a penalty of removal from service. Then, the applicant preferred an appeal to the appellate authority. since, after eight months the appeal was not disposed of, the applicant has filed this present application. It may also be mentioned that the applicant had



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approached this Tribunal during the pendency of the disciplinary enquiry for stalling the disciplinary proceedings on some grounds. The interim order was granted by this Tribunal restraining the authority from passing the order but ultimately, the OA came to be disposed of by the Tribunal in 1994 with a liberty to the applicant that, if any, adverse orders is passed, he may challenge before the appellate authority.

4. The applicant's case is that he worked as Substitute Loco Cleaner on the basis of his earlier service as casual labour card and on that basis he came to be appointed. That applicant's defence was prejudiced due to non-production of certain documents sought by him. It is also his case that the witnesses sought for by him, were not examined. That applicant has not obtained the appointment on the basis of any false record. That the applicant had no fair opportunity of defending himself in view of non-supply of documents. There was no independent evidence available for giving the finding against the applicant. Therefore, the applicant prays that the impugned order of the disciplinary authority may be quashed and he may be reinstated in service with all consequential benefits.

5. Respondents in the reply have stated that the enquiry has been done as per rules. It is stated that the applicant obtained job by submitting forged certificate. That replies have been given to the

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applicant regarding demand of supply of documents; that reply was also given to the applicant regarding examination of additional witnesses. Though, the applicant wanted 1 or 2 defence witnesses, he did not produce them and, therefore, their evidence could not be recorded. That the disciplinary authority has applied its mind and passed the impugned order that no ground is made for interference with the impugned order.

6. At the time of arguments, learned counsel for the applicant mainly contended that the applicants' defence is prejudiced, since the necessary documents were not produced and witnesses sought for by him were not examined during the enquiry. Learned counsel for the respondents on the other hand stated that the documents were not relevant and reply has been given to the applicant and the respondents have also given reply regarding applicant's request for examination for witnesses.

7. There is no dispute that if the relevant documents are not produced or furnished by the disciplinary authority, the enquiry stands vitiated. There is no need on the part of the administration to supply each and every documents sought for by an official. The administration has to supply only relevant documents. The applicant sought for number of documents presumably to show that he had worked as a casual labour during the relevant period.

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8. A perusal of the charge sheet shows that the graveman of the charge is that the applicant has obtained the job by submitting forged casual labour card. Learned counsel for the applicant may be right that the word "forged labour card" is not specifically mentioned in the charge sheet. A reading of the charge and the statement of imputations and the documents relied upon in the charge sheet will clearly show that the allegation against the applicant that he has obtained the job on the basis of the forged documents and verification by the Inspector of Works. From the perusal of this allegation, we can hold that this is a case where the applicant obtained the job by way of forged casual labour card. But on this aspect, witness Sh. Jutla states that he has not signed the casual labour card at all. He has been cross-examined on this point also. Therefore, both the parties knew as to what is the case applicant has to meet. The allegation is that he has obtained the job on the basis of forged casual labour card. In view of this, the question is whether the documents sought for by the applicant were relevant? We are not going into the merits of enquiry conducted by the Railway. The documents sought for by the applicant, were intended to show that the applicant had actually worked at the relevant period. But those documents have no bearing in considering whether the applicant had obtained the job on the basis of forged casual labour card. Question the applicant had obtained the job on the basis of forged casual labour card by forged signatures of Mr. Jutla. To decide this question,

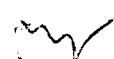
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those documents which are sought for by the applicant, are wholly irrelevant.

9. In Annexure A-5 (page 19 of the paper book) is one of the representation of the applicant wherein he has stated that he has to be given access to some documents. Then, regarding one document, there is a reply dated 18.6.92 (page 21 of the paper book) showing that the required document has been seized by the Vigilance Organisation of Hd.Qrs. Office, New Delhi. Then, in one more reply Annexure R-1, dated 17.3.1992 (page 48 of the paper book) informed the applicant that two documents are being supplied and other documents are neither relevant nor available in this office.

10. After examining the question, we find that to decide the charge that the applicant has obtained the job on the basis of forged casual labour card, the documents sought for by the applicant are wholly irrelevant. If Mr. Jutla says that casual labour card is not signed by him and the signatures are not his signatures, then this is a case obtaining the job on the basis of forged casual labour card. The argument urged by the learned counsel for the applicant regarding non supply of certain documents, is wholly irrelevant in the peculiar facts and the circumstances of the present case.

11. Learned counsel for the applicant placed heavy reliance on the judgement of the Division Bench



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of this Tribunal in Shri Chattra Pal Vs. Union of India & Ors. reported as 1991 (1) ATJ 417. It is an identical case of fabricated casual labour card purported to have been issued by Mr. Jutla, the same officer in the present OA. The Tribunal by interpreting the facts of the case has come to conclusion in that case purely on the basis of facts and when two other cases of identical nature of casual labour card, were cited before the said Bench, the said Bench observed that those two rulings are purely decided on the question of facts and not in question of law and, therefore, cannot be used as precedents.

12. Similarly, another Division Bench of this Tribunal in Madan Kumar Vs. General Manager & Ors. in OA No. 1997/96, in an identical case of casual labour card where same grievance of the applicant as in the present case for non-supply of the documents etc., they came to the conclusion that the administration has proved its case and application has no merit. In a matter of like this each case has has to depend on its peculiar facts and circumstances.

13. Another question is about non-examination of certain witnesses inspite of request made by the applicant in number of letters. We have been taken through all the representations, filed by the applicant, there is a consistant demand in his letters that additional prosecution witnesses be examined. Learned counsel for the applicant contended that applicant being a lay man has used words "Prosecution

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witnesses" instead of "Defence witnesses". In the facts & the circumstances of the present case, we cannot accept this argument. Even when the disciplinary enquiry had not even commenced, the applicant has approached this Tribunal by filing this OA and got the stay about passing a final order. The OA was filed in 1991. The charge sheet was issued in 1991. It may be one or one month after the date of charge sheet OA was filed. It is in 1994 the Tribunal disposed of the application by order dated 22.9.94. The applicant himself has produced the copy of the order at page 37 of the paper book. Therefore, right from 1991, the applicant had the benefit of legal advice and the fact that the number of representations referred to the legal provision, rules and section in article 311 of the constitution of India and other provisions in number of representations clearly give an idea that he had the legal advice even from the begining. His only demand was that administration should be called upon to examine as prosecution witnesses and offered for cross-examination. In this case administration gave a reply that it is not going to examine any more additional witnesses. If at all applicant wanted them, he can examine as defence witnesses.

14. Counsel for applicant invited our attention to one more judgement of this Tribunal in the case of Raj Karan Vs. U.O.I. & Ors. in OA 1358/95 passed on 28.9.1998 where in a similar case of bogus casual labour card, the Tribunal allowed the

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application where again it was a decision in view of facts of this case.

15. In the peculiar facts and circumstances of the case, there cannot be any straight jacket formula to decide all cases. In this connection, we may refer to the judgement of the Hon'ble Supreme Court in the case of State Bank of Patiala & Ors. Vs. S.K.Sharma reported as 1996 (2) SLR SC 631 where the Hon'ble Supreme Court went into the question in detail about the production of documents etc. The Hon'ble Supreme Court has observed that we have to see if any prejudice resulted the delinquent officer on account of not furnishing him the copies of the statements of witnesses. Test of prejudice must be applied. In para 33 of the reported judgement, Hon'ble Supreme Court observed as follows:-

"33. Now, coming back to the illustration by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise"

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16. Therefore, the Hon'ble Supreme Court has observed that irregularities or technicalities should not occasion failure of justice. Hon'ble Supreme Court has clearly pointed out that interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice, should not defeat ends of justice. The principles of natural justice are but the means to achieve the ends of justice. Mr. Jutla says that casual labour card is not signed by him and, therefore, it is held to be a forged document, then, production of all the documents sought for by the applicant could not make that casual labour card is signed by Mr. Jutla. Therefore, the whole prosecution case is not affected in any way by production of those documents and non-production of the documents will not help the applicant in any way to show that casual labour card is duly signed by Mr. Jutla.

17. Accordingly, the enquiry officer has considered the evidence and has reached the conclusion that the casual labour card was a forged card. The disciplinary authority has, in his order, considered this question and he also came to the conclusion that the casual labour card is a forged card. The question at issue was a simple issue. Both the enquiry authority and the disciplinary authority have examined the evidence and accepted the statement of the witnesses, have held that Mr. Jutla was denied his signatures on the casual labour card and stated that

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is a forged document. Since the point is a short point and had proved, there was no necessity for writing a detail order in the facts and the circumstances of the case. As far as the applicant's grievance about the documents is concerned, there was no necessity to mention the same in the final order of the disciplinary authority since he has already given replies earlier on those points. Therefore, in the facts and the circumstances of the case, we find that the disciplinary authority has applied his mind to the facts of the case and has taken the view that as per the statement made by Mr. Jutla, the casual labour card is held to be a forged card.

18. Another contention of the counsel for applicant is that Mr. Jutla should not be believed and there is no corroboration to this fact. Now it is fairly settled by number of decisions of the Hon'ble Supreme Court that a Tribunal cannot sit in appeal. This Tribunal cannot reappreciate and take another view, even if another view is possible. The scope of judicial is very limited to find out the legality of decision making process and not the legality of the actual decision. It is only in case of "no evidence", the Tribunal may interfere but not in case where the contention is want of sufficient evidence. We only refer to the latest judgement of the Hon'ble Supreme Court on this point reported as AIR 1999 SC 625 (Apparel Export Promotion Council Vs. A.K.Chopra) wherein Hon'ble Supreme Court has clearly held that this Tribunal cannot act as Appellate Court in

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disciplinary matters. In that case, the High Court had re-appreciated the evidence and quashed the order of penalty which came to be reversed by the Hon'ble Supreme Court on the ground that High Court could not have gone in the question of facts and interferred with the findings of domestic Tribunal.

19. Another contention was non-disposal of the appeal by the appellate authority. It may be so, the appeal was pending for about eight months and the applicant did not wait but filed the present OA and got the OA is admitted; as per rules the appeal abated. If the applicant realy wanted decision of the appellate authority, he could have approached the Tribunal and got the OA disposed of with a direction to the appellate authority to dispose of the appeal within a particular time. In fact, ld. counsel for respondents submits that after the reply was file in this case, the appellate authority has disposed of the appeal by dismissing the same. In view of the above, we need not go into the question since after the OA is admitted, appeal abates. In our view, none of the contentions urged on behalf of applicant merit acceptance.

20. In the result, this OA is dismissed. No order as to costs.

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

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*R.G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN (J)