

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A. No. 2022/95

New Delhi this the 11th day of November, 1999

HON'BLE MR.JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Mahesh,
Son of Shri Chotay,
Ex. Substitute Loco Clearner,
Under Locoforeman,
Laksar R/o 61-62 Kishan Ganj Market,
Old Rohtak Road,
New Delhi.

Applicant

(By Advocate: Shri B.S. Mainee)

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The Asstt. Mechanical Engineer (P),
Northern Railway,
D.R.M. Office,
Moradabad.

Respondents

(By Advocate: Shri P.S. Mahendru)

O R D E R (Oral)

BY REDDY, J.

Heard the counsel for the applicant and the respondents.

2. The applicant challenges the order of removal from service from the post of Substitute Loco Cleaner in the railways.

The facts of the case are as follows:

3. As per the applicant he worked as Casual

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Labour under IOW, Balamau from 1.11.1977 to 14.3.1982. He applied for the post of Substitute Loco Cleaner. He attended the interview where he had produced all the relevant certificates showing that he has worked as Casual Labour during 1972-82. After physical verification of the said period of working by authorities he was appointed as Substitute Loco Cleaner in 1988. While working as Substitute Loco Cleaner, the applicant was placed under suspension vide letter dated 11.9.1990. Subsequently a Memo of Charge sheet for major penalty was served upon the applicant alleging that the applicant and the staff of railway connived and committed forgery in order to show that the applicant had worked during the period from 1.11.1972 to 14.3.1982 for securing appointment as Substitute Loco Cleaner. It was further alleged that when it was required to reverify the original working of the applicant, the signatures of IOW, Balamau was also got forged. The applicant submitted his explanation to the charge denying the same. An enquiry thereafter was conducted and the Enquiry Officer found that the charge was established. The disciplinary authority agreeing with the findings of the Enquiry Officer found him guilty of charge and removed him from service by the impugned order dated 11.11.1994. The applicant's appeal has been rejected.

4. The learned counsel for the applicant Shri B.S. Mainee, submits that the relevant documents, such as, Casual Labour Register, Attendance Register were not made available to the applicant. It is also contended that the Enquiry Officer has not made available the

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Defence Witnesses required by the applicant during the Enquiry and the Enquiry Officer proceeded with and completed the inquiry without thus affording a reasonable opportunity to defend the case. It is, therefore, contended that the entire enquiry is vitiated on the ground of violation of principle of natural justice and also that the applicant was prejudiced in effective defence of his case.

5. It is further contended the disciplinary authority fell into an error in solely acting upon the evidence of Mr. Jutla who was under cloud and whose evidence is a tainted piece of evidence, (without the same being considered) prosecution witness viz., Mr. Jutla and the said witness being under cloud, the same should not have been relied upon being painted evidence.

6. The learned counsel for the respondents, however, refutes the contention and submits that all the available documents have been supplied to the applicant. It was also submitted that though the passes have been sent to the defence witness, they did not attend hence they had done what all they could do in securing the defence witnesses. It was further contended that the Enquiry Officer has considered the evidence of Mr. Jutla and came to the conclusion that his signatures have been forged by the applicant, the said finding being the finding of fact cannot be interfered with or altered in the O.A.

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7. We have given our careful consideration of the arguement advanced in the case. We have also perused the various documents filed.

8. It is the case of the applicant that he worked as Casual Labourer for the period from 1.11.1977 to 14.3.1982. It is not in dispute that unless one works as Casual Labourer prior to 4.10.1978 he would be ineligible to be considered for appointment as Substitute Loco Cleaner. Hence, it is necessary for the applicant to have satisfied the authorities that he had worked for sometime as Casual Labourer prior to 4.10.1978 by way of producing the necessary certificates. Only thereafter, he must have been appointed as Substitute Loco Cleaner. Subsequently, on the ground that it came to light that the applicant has not in fact worked as Casual Labourer, his case was reviewed and the applicant was given the charge memo. During the enquiry, the applicant had requested the Enquiry Officer for several documents more importantly 1) the Casual Labourer Card, 2) Paid voucher register for the period from 1.11.1977 to 14.3.1982 in respect of the payments made to casual labourers and 3) Statement of Shri Jutla as recorded during re-verification. He also called for the production of the defence witnesses who were the official witnesses to prove that he had been working as Casual Labourer during the period 1977 to 1982. No doubt Mr. Jutla has been examined as the sole prosecution witness, the other official witnesses have not been made available to the applicant. In the enquiry report it is only stated that defence witnesses are involved in the scandal of forged appointment either directly or indirectly, even then all

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✓ of them were called three to four times and railway passes were also sent. CO was asked to arrange their attendance but no one turned up. It is also stated that some of the defence witnesses called for did not also attend. It is contended by the learned counsel that if the witnesses did not attend, it was required that the Enquiry Officer should have issued summons for their presence. No such course was, however, adopted by the Enquiry Officer. Thus it cannot be said that the department have taken all steps to secure the defence witnesses. The nature of the case is such only official witnesses could establish whether the applicant had worked during the period.

9. In so far as the documents asked for are concerned, it was stated in the enquiry report that the Live casual Labour Register which was produced in the enquiry was incomplete. It only showed the work done for the period from 1.12.1981 to 14.3.1982. For the period from 1.11.1977 to 14.3.1982 which was the relevant period, the relevant Casual Labour Register was, however, not produced. It is seen that the signatures of Mr. Jutla are present on the said Card. The other documents which was called for viz. paid vouchers pertaining to the period from 1977 to 1982 were not produced. It is stated in the reply given by the Disciplinary Authority that documents cannot be supplied because they are mixed up in the file regarding the scandal of fraudulent appointment. Regarding paid vouchers which are very important documents in the case, it was replied that this request related to Sr. Divisional Accounts Officer, Moradabad.

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10. It is thus seen that important official witnesses and the relevant documents asked for by the applicant were not supplied. As ^tsated (Supra), the charge against the applicant rested solely upon the fact whether the applicant, in fact worked as Casual Labour. If the Casual Labour Register and paid voucher register had been produced, it would have clinched the issue. But the relevant Casual Labour Register has not been produced.

11. The main witness, which was relied upon by the prosecution, Mr. Jutla was admittedly under cloud as charges had been levelled against him for connivance in irregular appointments and he was himself facing an enquiry. The applicant was found guilty on his testimony that the signatures found on the application form as well as in the Casual Labour Card were not his. His testimony has not been corroborated by any other independent witness. In the circumstances, there appears to be reasonable doubt about the veracity of the evidence of Mr. Jutla. In O.A. No. 1358/95 of the Tribunal considering an identical issue has observed as follows

"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 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

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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".

12. Again in O.A. 1884/95 decided on 31.8.1992, the Principal Bench in an identical matter has taken the view that if the prosecution has examined Mr. Jutla who was also facing a Departmental enquiry in respect of the same scam, then why defence should have been denied the opportunity to Mr. B.K. Das and Shri A.P. Srivastava as Defence witnesses. On the ground of non production of necessary witnesses, the O.A has been allowed and the order of the disciplinary authority has been set aside. (AIR 1961 SC 1623). In State of Madhya Pradesh Vs. Chintaman, the Supreme Court has observed that rules of justice require that a party should have the opportunity of adducing "all relevant evidence on which he relies" (emphasis supplied). In Tirlok Nath Vs. Union of India & Others 1967 SLR (SC) 759 Supreme Court has observed that "If the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, i.e., documents sought to be relied upon by the Inquiry Officer or required by the public servant for his defence" (emphasis supplied). In State of Gujarat Vs. Ramesh Chandra Mashruwala 1977 GuJ 173 the Supreme Court expressed the same view. The rationale for making available the documents required by the delinquent officer is that it is indispensable for putting forward effectively his defence. In Kashi Nath Dikhita Vs Union of India ATR 1986 SC 186 the supreme Court observed as follows:

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"If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid stand and the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failure to supply these materials would tantamount to denial of reasonable opportunity to the applicant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk".

13. In view of the above authorities, we are of

the view that the enquiry in the present case has been vitiated on the ground that the enquiry Officer has not made available the relevant documents in the case as well as the defence witness who are crucial in the case. The principles of natural justice have thus been violated.

14. In the normal course we would have directed the department to hold further inquiry from the stage of supplying documents. However, since there is inordinate delay, in disposing of this O.A due to no fault on the part of the applicant, we do not deem it appropriate to direct a fresh enquiry from the stage of supply of documents. It is made clear, however, that the applicant would not be entitled to any seniority. Since in the meantime many persons have been promoted and if the seniority of the applicant is directed to be restored, it is likely to create unnecessary problems and hardships to other applicants who are not before us.

15. We accordingly allow the O.A and quash the impugned orders. The applicant has to be reinstated but would not be entitled to claim any back wages or seniority on the basis of the intervening period. The respondents

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will comply, with this direction within a period of one month from the date of receipt of a copy of this order. No costs.

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(MRS. SHANTA SHAstry)
MEMBER (A)

Chintamanyulu

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN (J)

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