Central Administrative Tribunal
Principal Bench
New Delhi

(6)

O.A. No. 2103/95 Decided on 31.8.1999

Gindresh Muni ... Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India & Ors. ... Respondents

(By Advocate: Shri B.S.Jain)

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.2103/95

Tuesday, this the 31st day of August, 1999.

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

Gindresh Muni,
R/o. House No.45,
Gali No.4,
Sangham Vihar,
New Delhi. ... Applicant.

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

O R D E R (ORAL)

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

This is an application filed by the applicant challenging the disciplinary action taken against the applicant. The respondents have filed their reply. We have heard the learned counsels appearing on both sides and also perused the original enquiry file made available to us by the learned counsel for the respondents.

2. The applicant was appointed as a substitute loco cleaner by order dt. 28.11.1988. He worked for about three years. It appears, there was a scam in the Railways where number of people had taken up jobs as Group 'D' officials on the basis of their alleged casual labour service earlier. After the Railway Vigilance made some preliminary enquiry

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charge sheets were issued to many employees including the applicant. The charge sheet issued against the applicant is dt. 22.1.1991. Two allegations are made in the charge sheet. One is that the applicant has obtained a job on the basis of his casual labour service from 15.6.1978 to 14.8.1978, but for the purpose of verification the records are not available. The second allegation is that as per the date of birth disclosed by the applicant viz. 25.8.61 he was under-aged on the date of his initial appointment on 15.6.1978.

The applicant filed a reply to the charge sheet denying the allegations. He asserted that he had worked as a Casual Labourer during the relevant period and as far as his under-age is concerned he has stated that he had given the correct date of birth, but the administration has relaxed the age and appointed him. He also sent number of representations to the Disciplinary Authority and also to the Enquiry Officer asking for additional documents, but they were not furnished. An Enquiry Officer was appointed. One prosecution witness was examined. On behalf of the applicant five defence witnesses were examined. After the enquiry, the Enquiry Officer submitted a report holding that the charge is proved. On the basis of the Enquiry Report, the Disciplinary Authority passed the impugned order dt. 3.1.1994 agreeing with the enquiry report imposing a penalty of removal from service. Aggrieved by that order the applicant preferred an appeal to the Appellate Authority. The Appellate Authority did not dispose of the appeal and therefore, the applicant has approached this Tribunal in O.A. No.1504/94. That O.A. was disposed of by this

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Tribunal by order dt. 23.3.1995 giving a direction to the Appellate Authority to dispose of the appeal within a period of three months. Accordingly, the Appellate Authority by order dt. 27.6.1995 dismissed the appeal by observing that the charges are proved against the applicant and he has been inflicted a proper punishment. Being aggrieved by these orders, the applicant has approached this Tribunal.

3. The applicant's case is that he has not committed any such mis-conduct as alleged in the charge sheet. He had actually worked as a Casual Labourer during the relevant period and on the same he was appointed on regular basis. As far as the under-age is concerned, it is stated that he never mis-represented about his date of birth and he has given his date of birth correctly and on that basis he has been appointed by the Administration. It is also his case that the Divisional Railway Manager has power to relax the age even in the case of under-aged people and accordingly DRM's approval has been obtained before appointing the applicant. It is his further case that the whole enquiry is vitiated since number of documents sought for by the applicant were not produced during the enquiry. One defence witness sought for by the applicant was also no examined during the enquiry. It is also alleged that the orders of the Disciplinary Authority and the Appellate Authority are cryptic orders and are invalid since they are non-speaking orders. It is, therefore, stated that the impugned orders be quashed and applicant be reinstated with all consequential benefits.

4. The respondents in their reply have taken the

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stand that whatever relevant documents were available have been furnished to the applicant. That the enquiry has been done as per rules. That the applicant had sufficient opportunity to defend himself in the Enquiry. It is alleged that applicant had secured employment by fraudulently showing that he had worked as a Casual Labourer during the relevant time. The applicant was under-aged and therefore he could not have been appointed as a Casual Labourer in 1978. It is stated that efforts were made to verify the previous service of the applicant, but it was not supported by any valid documents. That no case is made out for interference with the impugned orders.

5. The learned counsel for the applicant has questioned the correctness and legality of the impugned orders. He argued that the enquiry is vitiated due to non-supply of number of documents sought for by the applicant and thereby the applicant has been prejudiced in his defence. He also commented on the non-examination of defence witness. He also commented on the legality of the non-speaking orders passed by the Disciplinary Authority and the Appellate Authority. On merits, he contended that the applicant has not committed any mis-conduct and this is a case of no evidence calling for interference by this Tribunal. On the other hand, the learned counsel for the respondents maintained that whatever documents which were relevant are furnished to the applicant. He also argued that no authority has powers to relax under-age and therefore, the very initial appointment of the applicant was illegal. As far as non-examination of Mr.Kevat is concerned, it was

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argued that it was for the applicant to produce his defence witness and the Administration cannot be found fault with if Mr.Kewat does not turn up. On merits, he supported the findings of the Enquiry Officer and the orders of the Disciplinary Authority and the Appellate Authority. He also argued that when the Disciplinary Authority is agreeing with the Enquiry Report, he need not write a detailed order.

6. After going through the materials on record,we find that there is a defect in the enquiry since documents sought for by the applicant were not produced by the Administration. The applicant has made number of representations seeking production of certain documents to prove his defence. The first such document is at page 25 of the paper book dt. 16.2.1991. The applicant has asked the Administration to produce the DRM's approval and the concerned file to show that the applicant's appointment had been approved and in one of the letters he has even stated that DRM has powers to relax the under-age of the applicant and this has been done. That document viz. DRM's approval or the concerned file were not produced during the enquiry. Then, the applicant had sought for the production of Casual Labour Card bearing No.134298 and the Service Record pertaining to his working as a Casual Gangman, but they were not produced. These documents were necessary to prove the defence of the applicant to prove that he had actually worked during the relevant period. Then, he had sought for two medical memos to show that he was shown as under-age at that time and inspite of that he was appointed and this indicated that there was

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relaxation of age in his favour. Then, he wanted one more document dt. 22.7.1985 where the concerned officer had verified the service particulars of the applicant and found it as correct. All these documents were relevant documents and were material documents to prove the defence of the applicant in respect of the two charges framed against him. Unfortunately, these documents were not produced by the Administration during the enquiry. Merely, saying that all relevant documents were furnished will be of no avail because these documents will go to the root of the matter during the enquiry. In fact, one such letter is now produced by the learned counsel for the respondents before us which is dt. 22.7.1985, which the applicant has referred to as Item No.3 in his letter dt. 16.2.1991 which is at page 20 of the paper book. This document dt. 22.7.1985 is a letter written by the P.W.I., Norther Rly. Rosaz to the P.W.I.,Northern Rly. Safipur asking for the casual labour particulars of the applicant. On this document there is an endorsement on the left hand side by hand by P.W.I. Safipur stating that he has verified as per the office record and it shows that the service particulars are correct. This was a most important document which the applicant wanted during the enquiry, but it was not produced. The only submission of the respondents counsel is that this note in hand-writing is put by Mr.Kevat and he was not examined by the applicant as defence witness, though cited by him. This is an official record of the Administration, there is an entry made by the officer during the discharge of his official duties that he has verified the records and found the entries correct. It is no part of the applicant

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to prove the entry of the official record, it is for the administration to explain as to how this entry came to be made either by examining Mr.Kevat or some other official. There is a presumption that all official acts have been done in the usual course. When there is an official record which says that verification has been done and the service particulars are correct, then the burden shifts on the administration to show that the verification entered is false or it is a wrong entry. But, no such attempt was ever made by the administration to prove that fact.

7. In our view, therefore, non-supply of material and relevant documents has prejudiced the defence of the applicant. In an identical case pertaining to some scam about appointment of Casual Labourer, in the case of Raj Karan, a Division Bench of this Tribunal in O.A. No.1358/95 interfered with the order of the Disciplinary Action against the official in their Judgment dt. 22.8.98 on two grounds viz. non-production of documents and non-examination of defence witnesses. The learned counsel for the respondents may be right that in this case the applicant had examined five witnesses and even Mr.Kevat was also summoned by the Enquiry Officer, but some how he did not turn up. Therefore, the observation in the Judgment regarding non-production of defence witnesses may not apply to the present case. But, in that case the Tribunal examined the question of non-supply of material documents and held that the Enquiry is vitiated. They did not even order any fresh enquiry after supplying documents.

8. In the present case, it is not a case of the applicant obtaining job on a bogus or fake casual labour

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card. Here, the allegation is that the service particulars could not be verified for want of records. If service particulars could not be verified for want of records, the administration has to blame itself and not the employee. All the official records are in the office. If some records are missing, then the employee cannot be held responsible. But, the learned counsel for the respondents tried to explain that "want of record" means that applicant's name does not find a place in the existing available records. We cannot accept this argument since it is not the allegation either in the article of charges or in the statement of imputation. If the charge was that inspite of verification of available records the applicant's name does not find a place, then the matter would have been different. But, here the allegation is that the service particulars could not be verified for want of records. This statement cannot also stand the test of scrutiny in view of the verification report of the P.W.I. of Safipur which we have already pointed out.

9. As far as the other charge of under-age is concerned, the applicant has made a specific request for production of certain documents to show that he has not mis-represented anything regarding his age and on the basis of his age the administration appointed him with open eyes and this was presumably due to the approval of DRM for relaxation of age. The applicant made this allegation and wanted certain documents to support his stand, but those documents were not produced by the administration. Then, what is more we find that the sole prosecution witness examined in this

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case has admitted in the cross-examination that the DRM has powers to relax under-age. A specific question has been put to him and he has answered that after scrutiny. If the scrutiny committee finds that a particular employee is under-age, then the matter will be referred to the DRM for his approval and he has powers to grant age relaxation. The learned counsel for the respondents submitted that no-body can grant relaxation of age. No Rules were brought to our notice. The P.W.-I has admitted this. Further the applicant wanted some documents to prove his defence that DRM has relaxed his age. In the absence of that document and admission of P.W.-I there is no difficulty to hold that the applicant has been prejudiced in his defence. It is not the case that the applicant mis-represented his age or has given more age than his real age. He has given his clear age and he has been examined by the Doctor and he has been appointed with open eyes by the Administration, but three years later, the Administration has issued the charge sheet alleging that he was under-age. In the facts and circumstances of the case, we are satisfied that the applicant has been seriously prejudiced in his defence. This is also a case where on the available evidence no case of mis-conduct has been proved against the applicant for the simple reason that there is no material on record to say that the service particulars mentioned in applicant's appointment order were fake or false. In view of this conclusion, we need not consider the other contentions of the applicant's counsel about legality of the orders of the Appellate Authority and Disciplinary Authority on the ground that they are non-speaking orders.

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10. Now, remains the question as to what direction we should give? We have already referred to a Judgment of the Division Bench of this Tribunal in O.A. 1358/95. Taking the facts and circumstances of the case into consideration, on an identical case, the Tribunal ordered reinstatement without back wages, but giving no liberty to the administration to hold fresh enquiry. In addition, to the observation made in that order with which we fully agree, In the present case, as far as under-age is concerned we have already expressed the view that the administration has not produced the necessary documents. As far as the casual labour service is concerned the allegation is not that the entries are false, but the entries could not be verified for want of record. Therefore, this is still a stronger case where we cannot give any opportunity to the administration to hold the enquiry afresh.

In view of our finding that the enquiry is vitiated, the applicant is entitled to be reinstated. Since we are not giving opportunity to the administration to hold enquiry again, in the circumstances of the case, we are not awarding back wages to the applicant. However, the applicant would be entitled to salary prospectively viz. from to day and onwards. It is quite likely that applicant might have been employed elsewhere or he may not come and report for duty immediately. In such a case, awarding salary from to day and onwards may not be just. On the basis of this order if the applicant comes and reports for duty within 15 days from the date of this order, then he would be entitled to salary from to day and onwards. But, however, if he reports

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for duty beyond 15 days, then he would be entitled to future salary from the date he reports for duty irrespective of the question whether he is taken to duty or not by the Administration. If inspite of his reporting for duty, if the administration delays by few days or month or more, then he would be entitled to salary from the date he offers himself to join duty.

11. In the result, the application is allowed. The impugned orders dt. 3.1.1994 and 27.6.1994 are hereby set aside. The Respondents are directed to reinstate the applicant forth with. However, in the facts and circumstances of the case, the applicant is not entitled to any back wages, since we are debarring the Administration from holding any fresh enquiry on the basis of the impugned charge sheet. However, the applicant will have continuity of service from the date of removal till the date of reinstatement for the purpose of leave, pension etc. However, the applicant is entitled to full wages from to day till the date of reinstatement and of course, after reinstatement also (subject to the observations made in para 10 above). The respondents are directed to comply with this order within a period of three months from the date of receipt of the copy of this order. No order as to costs.

(J.L.NEGI)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

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