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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2221/1995

New Delhi, this the 6th day of September, 1999

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

Sh. Rishipal, S/O Sh. Kundhan Lal, Ex. Substitute Loco Cleaner under Locoforeman, Northern Railway, Moradabad.

---Applicant.

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

VERSUS

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

2. The Divl. Railway Manager, Northern Railway, Moradabad.

---Respondents.

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

O R D E R (ORAL)

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

This is an application filed by the applicant challenging the disciplinary action taken against him by the respondents. Respondents have filed their counter. We have heard Mr. B.S.Mainee, counsel for applicant and Mr. B.S.Jain, counsel for respondents and perused the entire record including the original enquiry file now placed before us by the counsel for respondents.

2. The applicant has been appointed as Substitute Loco Cleaner in Northern Railway at Moradabad. It appears during 1991, the Administration found the applicant had not worked as casual labour previously and, therefore, issued a charge sheet dated 20.3.91 alleging that he had not worked as a casual

labour during the relevant period, namely, 17.5.78 to 30.11.81. He had obtained appointment on the basis of forged records. The applicant's defence is that he had worked as casual labour during the relevant period and he wanted the Administration to produce certain documents to prove his case. He gave number of letters to the Disciplinary Authority for production of certain documents, according to him, there was no reply to the same.

3. An Enquiry Officer was appointed. Only one witness was cited in the charge sheet, namely, Sh. Lala Ram, he was examined by the Enquiry Officer and he did not support the prosecution but supported the defence version. In order to understand the truth of the case, Enquiry Officer himself examined two more witnesses suo moto, who are Mr.Shiv and Mr.S.P.Jutla. The applicant did not produce any defence witnesses. On the basis of oral evidence of three witnesses and documentary evidence, wrote a lengthy report and by detailed discussion, he reached the conclusion that the charge against the applicant was not substantiated. He submitted the report to the Disciplinary Authority.

4. The Disciplinary Authority did not accept the report of the Enquiry Officer but came to tentative conclusion that the report should not be accepted and prepared a note of disagreement as per his note dated 21.4.93 and sent a copy of the same alongwith enquiry repot to the applicant calling for his representation so that he can take a final decision. The applicant

responded by giving a detailed reply to the said letter of the disciplinary authority. Then later the disciplinary authority by the impugned order date 5.10.94 came to the conclusion that the charge against the applicant is proved and accordingly imposed the penalty of removal from service. Being aggrieved by the order, the applicant preferred an appeal but the appellate authority by order dated 7.2.95 upheld the order of the disciplinary authority and dismissed the appeal. Being aggrieved by this order of appellate authority the applicant has preferred this application.

5. The applicant's case is that he worked as casual labour during the relevant period and he has denied the allegation of forging the documents. He supports the enquiry report which exonerated him. That the findings of the disciplinary authority regarding misconduct, is contrary to the evidence on record and not supported by any evidence. That the prosecution witnesses have clearly admitted the case of the applicant certain documents called for by the applicant were not produced during the enquiry. That the orders of the disciplinary authority and appellate authority are not sustainable in law. The applicant, therefore, prays that the impugned order be quashed and he may be reinstated in service with all consequential benefits.

6. Respondents in the reply have justified the action taken against the applicant. The disciplinary authority was not bound to accept the report of the Enquiry Officer. On the basis of record, the

disciplinary authority has passed orders and confirmed by the appellate authority and no ground made out to interfere with those orders.

7. At the time of argument, counsel for applicant contended that the applicant was prejudiced since number of documents sought for by the applicant, were not produced during the enquiry. Counsel for applicant's main contention is that the enquiry officer by a detailed order has exonerated the applicant and, therefore, the order of the disciplinary authority regarding misconduct, is not supported by any evidence and, therefore, this is a case of "no evidence" calling for interference by this Tribunal. On the other hand, counsel for respondents contended that this Tribunal cannot act as Appellate Court and interfere with the findings of the disciplinary authority and appellate authority on record and cannot reappreciate the evidence on record. On merit he supported the order of the disciplinary authority and appellate authority.

8. There is no dispute that this Tribunal cannot re-appreciate the evidence and take another view, even if another view is possible. It is not necessary to refer to any decision on the point, since it is well settled by number of the judgements given by the Apex Court that the scope of the judicial review is very limited, it cannot interfere with the findings of fact recorded by a domestic Tribunal unles it is a case of "no evidence". The Tribunal can also interfere when the principles of natural justice are not observed, or

where rules or procedures are not followed resulting prejudice to the delinquent official.

In this case, the applicant had sought for some documents in his defence and this could be gathered from number of representations sent by the applicant which are at pages 19 and 20 of the paper book. At the time of arguments, counsel for respondents pointed out that from one of the letters in the file, one document, namely, copy of the casual labour card was sent to the applicant, but we do not find any acknowledgement for the same on the record. Even accepting for a moment, that photo-stat copy of the casual labour card was sent to the applicant, there is no material to show that the other documents called for by the applicant, were furnished or not? The applicant has alleged that these documents were not supplied to him. If material documents are not supplied to the applicant, naturally, he will be prejudiced during the enquiry.

9. Now coming to the merits of the case, we find that the enquiry authority has gone into the question in detail by writing a lengthy reasoned speaking order running into 17 pages by discussing the oral evidence and documentary evidence and has reached the conclusion that the misconduct is not proved. In particular, the enquiry authority has referred to the admissions of all the three witnesses who have admitted that during the relevant period, the applicant had worked as casual labour. Since, we are not siting in appeal, we cannot reappreciate the evidence. The

enquiry officer has referred to the oral evidence in detail and has come to the conclusion that all the three witnesses and the relevant documents show that the applicant had worked as casual labour during the relevant period.

10. Now we come to the order of disciplinary authority (page 12 of the paper book), it is very short order runing it to few sentences where there is no discussion of the evidence of witnesses and has not referred to the important document, namely, the casual labour register and the enteries made therein. By a cryptic order, the disciplinary authority has reached the conclusiion that the charge is proved. If the disciplinary authority is agreeing with the enquiry report, then he may not write a detailed order and he could express his opinion by short order agreeing with the findings of the enquiry authority. But in a case where he is disagreeing with the enquiry report running it to 17 pages, we do not have even 17 lines by the disciplinary authority to show as to why he is disagreeing with the enquiry report. On the facts and the circumstances of the case, we can hold that the order of the disciplinary authority is perverse order and not based on any evidence on record. It is certainly a case of order of disciplinary authority suffering from the vice of "no evidence". We are not persuaded by the argument of the counsel for respondents that the prosecution has proved that applicant had not worked as casual labour during the relevant period. On the other hand, the entries in the

casual labour register and the admission of the three witnesses, clearly show that the applicant had worked during the relevant period. Therefore, in the face of this material, the arguments of the counsel for applicant that it is a case of "no evidence" has sufficient force.

11. At one stage, we thought that the matter should be remanded since the applicant was not furnished certain documents. But here, by a detailed order, the enquiry authority has found that the allegation is not proved. We are not inclined to remand this matter, since we are reaching the conclusion that the order of the disciplinary autority cannot be supported and we are not inclined to remand the matter for any other enquiry. We are not granting any back-wages to the applicant as has been done in similar matters decided by this Tribunal in many other similar cases pertaining to employment on the basis of forged casual labour card.

In the facts and circumstances, we hold that the impugned order of the disciplinary authority and appellate authority are not sustainable in law and are liable to be quashed.

12. In the result, the application is allowed and the order of disciplinary authority dated 25.10.94 and the order od appellate authority dated 7.2.1995 are hereby set aside. As a result of this, the respondents are directed to reinstate the applicant in service

forthwith. In the circumstances, the applicant is not entitled to any back-wages. However, the applicant is entitled to future salary and allowances from today and onwards. We give liberty to the applicant to give a joining report to the respondents on the basis of a copy of this order within 4 weeks from today and in such a case, he is entitled to full wages from today till date of reinstatment. In case, the applicant does not give such joining report within time granted by us, he will be entitled to future wages from the date he gives such joining report till the date of his reinstatement. No order as to costs.

(J.L.NEGI)
MEMBER (A)

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

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