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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1177/96

New Delhi, this 4th day of April, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastri, Member(A)

Prabhoo
238E(Jhuggi), Railway Colony
SP Mukherjee Marg,
Delhi-6

.. Applicant

(By Shri G.D.Bhandari, Advocate - not present)

versus

Union of India, through

1. General Manager
Northern Railway, Baroda House, New Delhi

2. Divisional Railway Manager
Northern Railway
New Delhi

.. Respondents

(By Shri B.S.Jain, Advocate - not present)

ORDER(oral)

Reddy, J. -

None appears for the parties, either in person or through their counsel. This is a matter of 1996 and hence we have decided to dispose of the same, on merits.

2. The applicant was appointed on 14.1.76 as a casual labour under PWI/Balamau, Moradabad Dn. and he worked under him upto 14.8.86. Initially he was paid on daily casual rate basis and subsequently was treated as temporary labourer. He applied for the post of Sub Loco Cleaner (SLC, for short) in the grade of Rs.950-1540 on the basis of his casual service for more than 120 days. The working days of the applicant were verified and subsequently he was given appointment order as SLC. He was placed under suspension on 15.9.90 on the ground that he had committed forgery of the documents to secure employment as casual labour from 14.1.76 to 14.8.86. The enquiry officer (EO, for short) after conducting the

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enquiry submitted his report to the disciplinary authority (DA, for short) and agreeing with the findings of the EO, the DA has removed the applicant from service vide order dated 21/22.12.93 (A-1). The appeal filed by him has not however been disposed of by the respondents. The applicant questioned the impugned order of DA by way of this OA.

3. We have perused the pleadings and the materials placed on record.

4. One of the main grounds urged by the applicant is that this is a case of no evidence. It is his case that there is absolutely no evidence to support the findings of the EO.

5. We have perused the EO's report. The Articles of charge on the basis of which the enquiry has been initiated against the applicant are extracted as under:

1. That with his connivance a forgery was committed wherein he managed to show date of his entry in service under IOW/BLM. On 16.1.76 on which date he was underage having born on 20.4.59.

2. That his working under IWO/BLM during 16.1.76 to 14.8.86 could not be reverified for want of record and it is inferred that it is forged.

3. That he derived benefit out of the said forgery and became eligible to apply for the post of Loco Cleaner the pre-requisite condition of which was prior working of 4.10.78.

4. That he secured employment as Sub Loco Cleaner DDN for which he was not legally eligible.

5. That during suspension which was made for securing employment on suspected record he left HQ without permission on 15.10.90 and remained absent upto 27.4.91, without any authority.

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6. A perusal of the above articles of charges makes it abundantly clear that the main allegation against the applicant was that he secured employment as SLC by committing forgery of the service records when he was working as casual labour for the period prior to 4.10.78. Incidentally it was alleged that the applicant was on the date of entry into service under 10W/BLM on 16.1.76, ~~he was~~ also underaged, that while the applicant was under suspension he remained absent without any authority from 15.10.90 to 27.4.91. It is evident from his report that the EO has examined one Shri R.B. Singh, MCC under 10W/BLM on 9.10.93, who is said to have deposed that the seal of 10W/BLM fixed on the application of the applicant differs from the seal of 10W/BLM available in the office and so the seal fixed on the application of the applicant "is suspicious". Thereafter he examined another witness who was listed as PW in the SFS and he is stated to have deposed that the applicant was continuously absent from headquarter since 15.10.90 to 27.4.91 and was not available in the hrs. when required to be present in case of necessity. Thus it is concluded that it is sufficient material to prove charge No.5. Thereupon it is stated by the EO that he had gone through the personal file of the applicant during the enquiry and he had noticed that the original copy of TC bearing No.2 given by the Principal of Purb Madhamic Bidayalaya placed at Sl.No.9 of the personal file issued on 2.7.91 the date of birth recorded in the TC was 20.4.59. From the said date of birth, it was found by the EO that the applicant was 16 years, 8 months and 26 days. Hence he was underaged at the time of appointment and charge No.1 stood proved against him.

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7. Considering the above evidence and the date of birth, the EO has come to the conclusion that "remaining charges 2 to 4 are also proved "on the preponderance of probability".

8. The above findings as regards charges 2 to 4 of the EO are wholly unsustainable. Merely because the applicant was found underaged on the date he was appointed as casual labour and that he was absent during the period when he was placed under suspension, under no circumstances can it be said that the remaining three main charges 2 to 4 stood proved. Charge No. 1 by itself was not a misconduct because it was not alleged that the applicant has shown a false date of birth. Charge No.5 is only incidental to the main articles of charge 2 to 4. In fact, it was clearly stated by the EO that the seal of IOW/BLM differs with the seal on the application of the applicant would only "create suspicion". Suspicion cannot be basis for penalising and condemning an employee. On the basis of the evidence which was noted by the EO, it is impossible for any right thinking person to come to the conclusion that the main charge of securing employment by committing forgery was committed by the applicant. The finding on charge No.5 cannot also go to show that charges 2 to 5 stood proved.

9. In the above circumstances, we agree with the contention of the applicant that the findings of the EO are perverse and arbitrary as there is no basis for his conclusions. The DA without any further evidence or material on record agreed with the findings of the EO



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and imposed the punishment that is awarded against the applicant. The impugned order is therefore liable to be set aside.

10. The impugned order is therefore quashed. Respondents are directed to reinstate the applicant in service within 3 months from the date of receipt of a copy of this order. In the circumstances, we direct payment of 50% of wages to the applicant. The OA is accordingly allowed. No costs.

Shanta
(Smt. Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman(J)

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