

Central Administrative Tribunal, Principal Bench

Original Application No. 166 of 1996

New Delhi, this the 8th day of October, 1999

Hon'ble Mr. R.K. Ahooja, Member (Admnv)
Hon'ble Mr. Rafiq Uddin, Member (Judl)

Shri Uday Vir
S/o Shri Bhallatar Singh
Ex. Substitute Loco Cleaner
under Loco Foreman, Lakshar Applicant

(By Advocate - Shri B.S. Mainee)

Versus

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 - Shri R.P. Aggarwal)

O R D E R (ORAL)

By Hon'ble Mr. R.K. Ahooja, Member (Admnv)

On his claim that he had worked as casual labour under I.O.W., Balamau from 15.7.78 to 15.3.81, the applicant was appointed as a Substitute Loco Cleaner vide appointment letter dated 10.6.88 (copy at Annexure A-2). In the said appointment letter, it was stipulated that the applicant after his initial appointment on 15.7.78 had worked for 358 days earlier as casual labour. While working as substitute loco cleaner, the applicant was placed under suspension and disciplinary proceedings were initiated against him on the allegation that with his connivance, a forgery was committed wherein the period of his original working under IOW, Balamau was shown from 15.7.78 to 15.3.81, that he derived benefit out of the forgery and obtained employment as Substitute Loco Cleaner. On

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that account, an inquiry was conducted against the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. On the basis of the inquiry, the applicant has been removed from service vide order dated 2.11.94 (Annexure A-1). The applicant also filed an appeal but that was decided only after the filing of the present OA. The appellate authority upheld the order of the disciplinary authority.

2. The applicant impugns the findings of the enquiry officer and the order of the disciplinary authority on the ground that he has been denied proper opportunity to defend himself in the disciplinary proceedings. The ground taken by the applicant is that his request for certain documents essential for his defence was summarily rejected by the enquiry officer as "not relevant, nor available". Another ground taken by him is that the AEN, who was alleged to have found his casual labour certificate card to be forged, was not examined by the prosecution.

3. The respondents in their reply have submitted that there was a request from the applicant for supply of additional documents which was rejected and it was justified ^{on the ground} that the applicant had failed to show relevancy of those documents. They assert that the applicant was given full opportunity to cross examine the prosecution witnesses and also to produce his defence. One defence witness was also examined. On this ground, the respondents submit that the

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applicant was given due opportunity for his defence and the orders of the enquiry officer and the disciplinary authority are justified.

4. We have heard both the learned counsel.

5. The documents asked for by the applicant were the copy of the original casual labour register of IOW, Balamau on the basis of which his appointment was done, original pay sheets on the basis of which payment of salary was arranged from time to time and copy of the verification report submitted by IOW, Balamau. We agree with the learned counsel for the applicant that these documents were relevant documents because the veracity of the claim of the applicant as to whether he had or had not worked under IOW, Balamau ~~can~~ only be established conclusively from such documents.

6. Shri Agarwal, learned counsel for the respondents submitted that such documents were not available and adverse inference cannot be drawn against the respondents due to non-availability of these documents. This may be correct but we find in the present situation that without these documents, the respondents themselves could not conclude that the certificates produced by the applicant were forged and fake. The enquiry officer himself in his report has stated as follows:-

"To do justice the fact the undersigned is prompted to have a fresh look on the various documents required by the delinquent employee."

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Again he states as follows:-

"Because of the non availability of this documents pertaining to the record of working days and the record of his wages etc. gives some doubt".

Finally the enquiry officer concludes as follows:

"When this evidence was not considered valuble the only point which may go in favour of the employee is non-availability of record. But again on the basis of remark given by AEN/SPC there is no course open before the undersigned except to keep the reliance on the remark of AEN/SPC." (emphasis supplied)

7. Clearly the enquiry officer himself recorded that the documents asked for by the applicant were relevant and material for his defence. However, he concluded that as the AEN had made a remark regarding ~~varas~~ verasity of the certificate produced by the applicant, the enquiry officer had no alternative but to place ~~relax~~ reliance on that report. It would thus appear that even the enquiry officer was compelled by the remark of the superior officer even though he had some doubt about the allegations made against the applicant on account of foregery of record.

8. Learned counsel for the applicant has also placed for our perusal an order of the coordinate Bench in OA-2302/95 (Vipin Kumar vs. UOI) decided on 9.9.99. In that case, under identical circumstances, the Bench concluded as follows:

"But we are constrained to say that the inquiry which has been done now is vitiated and has seriously prejudiced the case of the applicant due to non-production of material

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documents which had a direct bearing on the important question viz. about the working of the applicant as a casual labourer during the relevant period".

9. In respectful agreement with the conclusions of the coordinate Bench, we are also of the opinion in the present case that the non-production of material documents as requested by the applicant has prejudiced the case of the applicant in making his ^{defense} ground. As a result the applicant has been denied proper opportunity to defend his case.

10. In the light of the above discussion, we allow this OA and the impugned order dated 2.11.94 is quashed. We however grant liberty to the Administration to ^{renew} ~~move~~ the inquiry according to law after observing the principles of natural justice and rules and on production of documents which are relevant and are available, as demanded by the applicant. No order as to costs.

Rafiq Uddin
(Rafiq Uddin)
Member(Judl)

R.K. Ahooja
(R.K. Ahooja)
Member (Admnv)

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