

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O..A.No.193/96

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New Delhi this the 4th day of December, 1998.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Shri Suresh,
s/o Shri Lalu,
Ex-Substitute Loco Cleaner,
under Loco Foreman, Northern Rly,
Lakshar.

..Applicant

(By Shri B.S.Mainee)

vs.

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divl.Rly Manager,
Northern Railway,
Moradabad.
3. The Divl. Mechanical Engineer,
Northern Railway,
Moradabad.

..Respondents

(By Sri B.S.Jain)

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

In response to a notice inviting applications from the casual labourers who had worked earlier for appointment as substitute loco cleaner, the applicant claiming to have worked as casual labourer under I.O.W, Balmau between 1.4.78 to 28.2.1982 submitted an application. That after the interview of the applicant and getting the previous working of the applicant verified by deputing a senior inspector, the applicant was appointed as substitute loco cleaner in the year 1988 vide the order Annexure A-2. While the applicant was working as a substitute loco cleaner under the Loco Foreman, Lakshar, he was placed under suspension vide the

order dated 24.9.1990 and was proceeded against departmentally as per memorandum dated a 30.5.1991 for certain alleged misconducts. The statement of Article of Charge and the Statement of Imputations against the applicant are as follows:-

"Statement of article of charges on the basis of which action has been proposed against Shri Suresh S/o Shri Laloo Sub.Loco cleaner LF/LRJ.

1. That with his connivance a forgery was committed where in the period of his working under IOW/BLM was shown from 1.4.78 to 28.2.82.
2. That he derived benefit out of this 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.
3. That with the commission of this forgery he managed to secure employment as Sub.Loco cleaner under LF/LRJ.
4. When required to re-verify his original working the signatures of IOW/BLM were found forged.

Thus Shri Suresh failed to maintain absolute integrity and acted in a manner unbecoming of Rly.servant thus he contravened rule 3.1(i) and (iii) of Rly.Service Conduct rule, 66."

Statement of imputation on the basis of which charges are to be sustained against Shri Suresh S/o Shri Laloo Sub.loco cleaner LF/LRJ managed to secure employment as Sub. Loco cleaner LF/LRJ by showing that he has worked under IOW/BLM during 1.4.78 to 28.2.82 while it is not supported by any valid document. When required to re-verify his original working the signatures of IOW/BLM were found forged. It is inferred that with his connivance a forgery was committed showing the original period commenced from 1.4.78 and he derived benefit out of this forgery gaining the eligibility to apply for the post of loco cleaner the pre-requisite condition of which was prior working of 4.10.78.

By doing so he failed to maintain absolute integrity and acted in a manner unbecoming of a Rly.servant and thus he contravened rule No.3.1(i) and (iii) of Rly Service Conduct rules,1966."

Though the applicant denied the charges after examination of the sole witness Shri S.P.Jutla and some of the witnesses whom the applicant requested to be examined as defence

witnesses the enquiry officer submitted a finding holding the applicant guilty which the disciplinary authority accepted. The disciplinary authority holding the applicant guilty of the charge imposed on the applicant the penalty of removal from service (Annexure A-1). Though the applicant has filed an appeal and a period of one year lapsed, the appeal remains to be disposed of. Under these circumstances the applicant has filed this application praying for setting aside the impugned order and for a direction to the respondents to reinstate him with all consequential benefits including back wages. It is alleged in the application that the enquiry was held in total violation of the principles of natural justice and statutory rules inasmuch as the applicant not having been supplied with the relevant documents which he required for his defence and not allowed the examination of witnesses through whom he proposed to establish his innocence. It is also alleged that the finding of the enquiry officer as also the disciplinary authority is baseless, arbitrary and unsustainable because reliance has been placed on certain documents which were not on record and when there was no acceptable evidence to come to the conclusion that the applicant is guilty.

2. The respondents in their reply statement seek to justify the impugned orders.

3. We have with meticulous care perused the pleadings and the documents placed on record and have heard Shri B.S.Mainee, the learned counsel of the applicant and Sri B.S.Jain, the learned counsel of the respondents.

4. The argument of the learned counsel of the applicant that the enquiry has been held without giving the applicant reasonable opportunity to defend himself, has considerable force. The charge against the applicant was that he had

derived benefit out of some forgery committed with his connivance whereby the period of his working under IOW, Balamau was shown from 1.4.78 to 28.2.82 and that he has with the commission of the forgery managed to secure employment as substitute loco cleaner. To substantiate the charge only one S.P.Jutla was examined and the copy of the casual labour card and an endorsement in the personal file alone were marked in evidence. The applicant had requested for supply of the following documents:

- i) Form of verification of casual labour service of the applicant which was signed by DPI, Moradabad.
- ii) Original application proforma of the applicant.
- iii) Copy of appointment letter issued in favour of the applicant.
- iv) Casual labour card in original.
- v) Paid vouchers pertaining to the period 1.4.78 to 28.2.82 in respect of payment made under IOW, Balamau.
- vi) Specimen signatures of Sri S.P.Jutla as recorded in service record.
- vii) Attendance register of IOW, Balamau for the period 1.4.78 to 28.2.82.

and for calling the following witnesses:

- i) Sri Sanjay Kumar, dealing clerk
- ii) APO(III), Moradabad.
- iii) Sri B.S.Das, DPI, Moradabad.
- iv) IOW, Balamau who worked during 1.4.78 to 28.2.82.
- v) AME(I), Moradabad.
- vi) AEN, Shahjahanpur
- vii) IOW, Balamau who signed the service record

for defending his case. No order was passed by the enquiry authority regarding the relevance of the witnesses or documents but declined to supply most of the important documents which the applicant wanted and to summon the witnesses desired to be examined by the applicant. The following extract from the enquiry report would show the

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ground on which the documents were not supplied and the witnesses were not called:

" During the course of D&AR enquiry, every fact into the case was examined and the points come into light as under:

The defence helper vide his defence note at page No.7 had asked documents:

- (a) Verification form in original: This document was not required to be handed over to the D/H.
- (b) Paid vouchers for the period from 1.4.78 to 28.2.82: These were already destroyed in the DRM/MB office being old record.
- (c) Attendance of IOW/BLM: This documents was not considered to be shown to the defence helper.
- (d) Photo copy of live casual labour register of IOW/BLM which was confiscated by Vigilance Department: The copy of the letter of Vigilance department was handed over to the defence helper.

The attendance of other witnesses who were already involved in the scandal of forged appointment of Loco Cleaners eg: Shri Sanjay Kumar, dealing clerk, Shri A.P. Srivastava, APO/III/MB, Shri B.K. Dass, DPI/MB. The other witnesses were not considered to be called in the enquiry."

The verification form which the applicant wanted was not made available to him on the ground that it was not required to be handed to a defence helper. It has not been stated that whether this document is relevant or not. Similarly paid vouchers have not been made available to the defence helper on the ground that they were destroyed but without stating as to when they were destroyed. Attendance register of IOW, Balamau, a document which would show whether the applicant had during the disputed period marked his attendance or not was not supplied to the applicant as the I.O. considered that the same was not to be shown and the photocopy of the live casual register having been seized by the vigilance, was not supplied. It would

have been possible for the disciplinary authority to obtain the casual labour register from the vigilance department for the purpose of the enquiry. These documents were of paramount importance for the applicant in putting up a proper defence because what the applicant wanted to disprove was the allegation that he did not work during the period from 1.4.78 to 28.2.82 at Balamau. The refusal to make available these documents to the applicant has resulted in deprivation of a reasonable opportunity to the applicant to defend his case. Further the only evidence in support of the charge is the testimony of one S.P.Jutla who denies the signature on the casual labour card and endorsement in the personal file that the signature was not his. If the only allegation in the memorandum of charge was that the applicant has forged a casual labour card purporting it to have been signed by Sri S.P.Jutla, then if Sri Jutla testified that he did not sign then it could be said that there was evidence to prove the charge against the applicant. Here a reference to the statement of imputation and the articles of charge would show that what was alleged was that a forgery was committed with the connivance of the applicant thereby showing the working period of the applicant as 1.4.78 to 28.2.82 which on reverification was found to be not correct and therefore that the applicant has secured employment taking advantage of a forgery. No evidence at all has been adduced to show that a reverification was effected with reference to the records available at Balamau station of the service of the applicant and that the reverification established that the applicant did not work there. It has not been known as to who conducted the re-verification also. The documents such as attendance register and casual labour

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register were very much relevant in establishing the charge against the applicant or disproving the charge. The respondents by not themselves producing the documents and refusing to make available the same to the applicant even when he requested, we are of the considered view that the enquiry has been reduced to a mere empty formality which is not the requirement of the statutory rules or the mandate of Article 311(2) of the Constitution. Refusal on the part of the enquiry authority to summon the witnesses named by the applicant on the ground that some of them were involved in a scandal of forged appointment of loco cleaners and the other witnesses were not considered to be called again is arbitrary, irrational and has resulted in deprivation of reasonable opportunity to the applicant to defend himself. The reliance placed by the enquiry officer on some discrepancies in the date of birth in the application form and the school certificate etc. those documents not having been brought on record also, is unsustainable. In fine we find that the enquiry was held totally disregarding the statutory rules and the principles of natural justice depriving of the applicant reasonable opportunity to defend himself and that the finding arrived at by the enquiry authority is based on no evidence. The disciplinary authority also has not applied his independent mind to the facts of the case and has blindly accepted the enquiry report and found the applicant guilty. We are not able to sustain this order. In the result the application is allowed. The impugned orders are set aside and the respondents are directed to reinstate

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the applicant in service forthwith with all consequential benefits and to pay to the applicant the entire back wages for the period he was kept out of service within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

R.K. Ahuja
R.K. AHOOJA
MEMBER (A)

A.V. Haridasan
A.V. HARIDASAN
VICE-CHAIRMAN

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