

(13)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./TXX. NO. 1997 /1996 Decided on : 5-11-98

Madan Kumar

... Applicant(s)

(By Shri B.S.Mainee Advocate)

versus

U.O.I & Anr

... Respondent(s)

(By Shri B.S.Jain Advocate)

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THE HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN

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

- ✓ 1. To be referred to the Reporter or not ? *yes*
- X 2. Whether to be circulated to other Benches
of the Tribunal ?

Km
(K.M.AGARWAL)
CHAIRMAN

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1997/96.

New Delhi, this the 5th day of November, 1998.

HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN

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

Shri Madan Kumar
s/o shri Jai Ram,
Substitute Loco Cleaner,
Under Loco Foreman,
Northern Railway,
MORADABAD (U.P)

...APPLICANT

(BY ADVOCATE SHRI B.S.MAINEE)

vs.

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The Assistant Mechanical Engineer (1),
Northern Railway,
Moradabad (U.P)

....RESPONDENTS

(BY ADVOCATE SHRI B.S. JAIN)

ORDER

JUSTICE K.M.AGARWAL:

This is an application under section 19 of the Administrative Tribunals Act, 1985 for quashing the order of removal passed by the disciplinary authority and affirmed by the appellate and the revisional authorities with consequential reliefs.

2. Briefly stated, on the basis of a claim that he had worked as a Casual Labour from 1978 to 1982, tentatively for 382 days under the I.O.W. Balamau, the applicant was successful in securing the post of Substitute Loco Cleaner pursuant to letter dated 11.7.1988, Annexure A-4 of the respondents. Subsequently by order dated 11.9.1990, he was put under suspension and, thereafter, charge-sheeted on

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20.2.1991 on the ground that he had secured employment as a Substitute Loco Cleaner on the basis of forged signatures of I.O.W. Balamau on the document, showing the different periods of his service during 15.2.1978 to 31.3.1982 under I.O.W. Balamau. The applicant denied his guilt, but was found guilty by the Inquiry Officer and accordingly removed from service by the impugned orders. Being aggrieved, he has filed the present O.A. for the said reliefs. This O.A. is resisted by the respondents.

3. The learned counsel for the applicant argued that handwriting expert was not examined to prove the disputed signatures of I.O.W. Shri S.P.Jutla on Casual Labour Register. Similarly, neither the copies of various documents demanded by the applicant nor a copy of preliminary report relied on by the Inquiry Officer was supplied to him. For these reasons, it was urged that the inquiry was vitiated. He relied on a decision of the Supreme Court in Chandrama Tiwari v. Union of India, 1988 (1) SLJ 180 (SC) besides relying on a decision of this Bench of the Tribunal in Shri Raj Karan v. Union of India, O.A. No.1358/95, decided on 22.8.1998.

4. The aforesaid arguments of the learned counsel for the applicant were controverted by the learned counsel for the respondents by referring to paragraph 13 of the O.A., paragraph 12 of the counter and the report of the Inquiry Officer dated 20.2.1991.

5. After considering the aforesaid arguments of the learned counsel for the parties and perusing the record, we find that no reply to the charges framed against him was filed by the applicant. Questions put by the Inquiry Officer and answers given by the applicant were recorded on 10.2.1991 and are contained in the document filed as Annexure A-10 by

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the applicant. These questions and answers are as follows:

"Question by E.O. to C.O."

Do you accept the charges contained in the above referred S.F.-5.

Reply of C.O. No, I do not accept the charges.

Q. Till date you have not submitted any defence reply. Will you please state whether you have to make some defence reply and whether you will defend the case yourself or you have some defence helper.

Ans: The reply could not be submitted as I was waiting for supply of documents asked for vide my application dated 4.4.91.

As regards defence helper I am H/w giving consent in writing of my defence helper sh.M.L.Narang CPI/MB."

Along with chargesheet dated 20.2.1991, statement of articles of charges and list of documents and that of witnesses relied on by the prosecution were given. As per the list of documents, only one document "P.P. 2 of the personal file containing the remarks of Shri S.P.Jutla dt. 7.9.90 endorsed by AEM/SPC on 8.9.90" was mentioned. Similarly under the list of witnesses, only the name of Shri S.P.Jutla, IOW/BLM was mentioned. (See Annexures I and II to the chargesheet filed as Annexure A-6). The documents demanded by the applicant vide his letter dated 13.5.1991, Annexure A-7 were as follows:

- "1. C.L.Card.
2. Transfer school certificate.
3. Verification report of D.P.
4. The relevant document if any, showing period of my working 15.2.78 to 31.3.82 said to have been signed by IOW/BLM.
5. Enquiry report of the Official said to have been reverified the period.
6. Statement of Sh. S.P. Jutla I.O.W./BLM.

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7. Hand writing Expert report if any on the basis of which it has been concluded that signature of I.O.W./BLM are forged.

Note (sic) Documents from item No.1 to 3 are relevant because there is a mention of it in the PP 2 supplied.

Documents 4 to 6 are quite relevant (sic) annexures I & II of the c/sheet."

With their letter dated 14.3.91, Annexure A-8, the respondents supplied a copy of C.L. card to the applicant. The other documents demanded by him were not considered relevant for the purposes of inquiry and, therefore, they were not supplied to him. Request made by the applicant on 4.4.1991 Annexure, A-9 for referring "the case to Government Hand Writing Expert for verification of the signatures of IOW concerned" was rejected. It is pertinent to note that the preliminary report was not referred to in the chargesheet. In his report, Annexure A-11, the Inquiry Officer noted that "Subsequently on enquiry by AEN/SPC on 8.9.90 the certificate was declared false." Before concluding his report, the Inquiry Officer found in the penultimate paragraph that "The entire C.L. register appears to have been prepared with one pen and one hand writing with several omissions all over the record. As such this basic record is a forged record." It was further mentioned with reference to the preliminary inquiry report that "The same version is held by GM (Vig.) placed at S.No.41". Keeping in mind this factual matrix, we now proceed to examine the merits of the arguments advanced on behalf of the applicant.

6. Though opinion of a hand writing expert is a relevant factor under Section 45 of the Indian Evidence Act, 1872, it is not conclusive evidence to prove the author of a disputed signature. If the applicant desired to examine any hand writing expert, he ought to have first obtained, with permission of the Inquiry Officer, authentic signatures of

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Shri Jutla, and thereafter sent the same to hand writing expert and examined him as his defence witness. In the alternative, he could examine any person acquainted with the hand writing or signatures of Shri Jutla as provided under Section 47 of the Evidence Act. Under Section 73 of the Evidence Act, he could at least ask the Inquiry Officer to compare the disputed signatures of Shri Jutla with those of his admitted or proved signatures. None of these courses was followed by the applicant. In the statement of article of charges, it was specifically mentioned that the document relied on by him to show that he had worked under IOW/BLM for different periods during 15.2.78 to 31.3.82, was found forged. The applicant filed no reply to the chargesheet. He did not deny specifically that the document was forged or that it bore the signatures of Shri Jutla. Only in answer to the question put by the Inquiry Officer he said that he did not accept the charges. He only wanted the report of the hand writing expert by his application dated 13.3.91 by presuming that the document was sent to the hand writing expert for his opinion. Thereafter, he made a request for referring the document to Government Hand Writing Expert for verification of the signatures of IOW concerned by his another letter dated 4.4.1991. Accordingly we are of the view that for want of opinion of the hand writing expert about the disputed signatures of Shri Jutla on Casual Labour register, the finding of the Inquiry Officer, or the impugned order of removal cannot be assailed as illegal.

7. By his application dated 13.3.91, Annexure A-7, the applicant wanted copies of as many as 7 documents. Copy of document mentioned at Sl.No.1 of the application was supplied to him. Other documents were not supplied because they were not considered relevant and further because they were not referred to or relied on by the department. As stated earlier, the applicant did not file any reply and did

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not disclose his defence and, therefore, also the other documents referred to in the application could not be said to be relevant for the purpose of his defence. All the documents mentioned at Sl.Nos. 2 to 7 in the applicant's application dated 13.3.1991 were either not in existence or were not relevant for the purpose of inquiry and, therefore, he cannot be heard to say that by not supplying the copies of the said documents at Sl.Nos. 2 to 7 of the application, Annexure A-7, principles of natural justice were violated by the Inquiry Officer or in the disciplinary proceedings.

8. The Inquiry Officer only made a reference to the preliminary report but did not base his inquiry report on that preliminary report. Copy of inquiry report dated 20.2.1991 was served on the applicant in August 1993 and he also filed his representation dated 12.9.93, Annexure A-12 before the disciplinary authority. After considering this representation, the disciplinary authority passed his impugned order of removal from service on 21.10.94. He cannot, therefore, say that a copy of inquiry report was not supplied to him before passing the impugned order by the disciplinary authority. The revisional authority specifically mentioned in its impugned order, Annexure A-3 that it was incorrect to say that the disciplinary authority and the appellate authority had relied on the conclusions of the Vigilance Branch in addition to the inquiry proceedings. It further observed that without seeing a report or conclusion of the Vigilance Branch, he went through the inquiry report and came to the conclusion that the misconduct alleged against the applicant was correctly found proved against him. We, therefore, find no infirmity in the impugned order of removal passed by the disciplinary authority or in the orders passed by the appellate and revisional authorities, affirming the order of the disciplinary authority.

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9. The decision of the Supreme Court in Chandrama Tiwari (supra) relied on by the learned counsel for the applicant is not in favour of the applicant. In that case, non-supply of a copy of preliminary report although mentioned as a document relied on by the prosecution was not considered fatal to the inquiry proceedings. The other decision relied on by the learned counsel was rendered by the Principal Bench of the Tribunal in the case of Shri Raj Karan v. Union of India (supra). In that case, a reply was filed by the delinquent official but the defence witnesses cited by him were not permitted to be examined by the Inquiry Officer on the ground that they were not reliable witnesses in the eye of Railway administration. In the present case, the defence witnesses were summoned but they did not turn up. It was the duty of the applicant to see that the persons whom he wanted to cite as defence witnesses appeared before the Inquiry Officer on the dates given for their examination. The defence witnesses were allowed to be examined and also summoned by the Inquiry Officer without insisting upon the applicant to disclose the relevancy of those witnesses. The inquiry report would further show that one of the defence witnesses had died and the other refused to appear as defence witness in spite of the case being adjourned once or twice for the purpose of his examination as defence witness. In so far as the documents are concerned, they were found to be irrelevant for the purposes of the present inquiry against the applicant. For all these reasons, the case of Shri Raj Karan is quite distinguishable on facts from the present case and, therefore, he cannot claim any advantage of the said decision of the Tribunal.

10. We are of the view that it was clearly a case of forgery and, therefore, the applicant had no courage to file any reply to the article of charges framed against him. In fact, it appears to be a case of a person who did not possess the pre-requisite qualifications prescribed by rules, but

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wrongly selected on the basis of forged documents. In such a case, question of violation of principles of natural justice does not arise, as held by the Supreme Court in State of M.P. v. Shyama Pardhi, (1996) 7 SCC 118.

11. For the foregoing reasons, we find no merit in this O.A. Accordingly it is hereby dismissed but, without any order as to costs.

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(K.M. AGARWAL)
CHAIRMAN

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