CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 45 /1996

DATE OF DECISION : 22-12-98

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

HON'BLE SHRI S. R. ADIGE, V.C. , ~~XXXXXXX~~ MEMBER (A)

~~Khushi Ram~~ ... Applicant(s)

-Versus-

Union of India & Ors. ... Respondent(s)

Advocates :

Mr./~~Mrs~~. B. S. Mainee for Applicant(s)

Mr./~~Mrs~~. B. S. Jain for Respondent(s)

1. Whether to be referred to Reporter? yes

2. Whether to be circulated to other Benches? yes

(K. M. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.45/1996

NEW DELHI THIS THE 22nd DAY OF DECEMBER, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL,CHAIRMAN
HON'BLE MR.S.R.ADIGE, VICE-CHAIRMAN(A)

Shri Khushi Ram,
S/o Shri Kalu,
Ex-Substitute Loco Cleaner,
Under Locoforeman, Northern Railway,
Moradabad. ....Applicant.

(By Advocate Shri B.S.Mainee)

vs.

Union of India: Through:

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

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

3. The Divisional Mechanical Engineer,
   Northern Railway,
   Moradabad. ....Respondents

(By Advocate Shri B.S.Jain)

ORDER

JUSTICE K.M.AGARWAL:

This O.A. has been filed for quashing the order of removal from service passed by the Disciplinary Authority and affirmed by the Appellate and the Revisional Authorities.

2. On the basis of a claim that he had worked as a Casual Labour for a period of 610 days between 15-12-1977 to 14-4-1982 under the I.O.W. Balamau, the applicant had secured an appointment letter dated 1-7-1988, Annexure A-3, for the post of a Substitute Loco Cleaner. While in service, he was suspended by order dated 11-9-1990 and then charge-sheeted on 8-7-1991 for securing employment as a Substitute Loco Cleaner on the basis of forged

signatures of I.O.W. Balamau on the relevant document pertaining to his service period. The applicant denied the charges, but was found guilty and accordingly removed from service. After being unsuccessful in his appeal and revision, he has filed the present O.A. for the said reliefs. The application is resisted by the respondents.

3. The learned counsel for the applicant argued that there was violation of the principles of natural justice and that the applicant was not given proper opportunity of being heard. He cited **S.K.Jain** v. **U.O.I**, ATR 1990 CAT 255 (PB); **Central Bank of India** v. **P.C. Jain**, AIR 1969 SC 983; **Vikram Singh** v. **U.O.I.**, (1991) 17 ATC 714; and **Raj Karan** v. **U.O.I.**, O.A. No.1358/95, decided on 22.8.1998 by the Principal Bench of the Tribunal in support of his arguments.

4. The learned counsel for the respondents denied that there was any violation of the principle of natural justice, or that reasonable opportunity of hearing was not afforded to the applicant. He cited **Tirlok Nath** v. **U.O.I.**, 1967 (1) SLR 759 (SC); **U.O.I.** v. **Upendra Singh**, (1994) 27 ATC 200 (SC); **State of Maharashtra** v. **Madhukar Narayan Murdikar**, 1991 (1) SLJ 164 (SC); **Ram Kumar** v. **State of Haryana**, AIR 1987 SC 2043; and **Indian Institute of Technology** v. **Union of India,** 1991 Supp (2) SCC 12 in support of his contentions.

5. Before we proceed to discuss the rival contentions, it may be remembered that justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be

13

perverted to achieve the very opposite end. That would be a counter-productive exercise. In **State Bank of Patiala** v. **S.K.Sharma**, AIR 1996 SC 1669, the Supreme Court summarised the principles governing disciplinary proceedings as follows:

> "(1). An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
>
> "(2). A substantive provision has normally to be complied with ....and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
>
> "(3). In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.....If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice.
>
> "(4).(a). In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

"(b). In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in **B. Karunakar**, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

"(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, ...In other words, a distinction must be made between 'no opportunity' and no adequate opportunity, i.e, between 'no notice'/ 'no hearing' and 'no fair hearing'. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query."

"(6). While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

"(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

To sum up, violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Unless prejudice is occasioned to the delinquent officer in defending himself properly and effectively, the enquiry held or the order of punishment passed cannot be held vitiated.

6. The present case is not a case of the category of 'no notice', 'no opportunity', or 'no hearing'. It is a case where the complaint is about non-supply of certain documents, denial of opportunity to examine witnesses in defence and a few other irregularities alleged to have been committed during the enquiry. We have, therefore, to see if the alleged irregularities or infirmities have resulted in any prejudice to the applicant.

7. The statement of imputation, Annexure II of the charge-sheet dated 8.7.1991 specifically mentioned that:

"Sh.Khushi Ram S/o Kalloo Prasad (the applicant), Sub. Loco Cleaner managed to secure employment as Sub. Loco Cleaner, L.F.MB by showing that he has worked under IOW/BLM during 15.12.77 to 14.4.82 while it is not supported by any valid documents, 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

16

committed showing the original period commenced from 15.12.77 and he derived benefit of his 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."

The imputation was clear and unambiguous. One of the eligibility conditions was that of working as a Casual Labour prior to 4.10.78. The applicant managed to show on the basis of the forged signature of IOW/BLM on his Casual Labour Card that he had worked with the IOW/BLM since 15.12.77, a date prior to 4.10.78. Accordingly he secured employment as a Substitute Loco Cleaner. Annexure III to the chargesheet mentioned "C.L. Card" and "PP-3 of the Personal File containing remarks of Shri S.P.Jutla, IOW/BLM (Now at MB) duly endorsed by AEN/SPC" as the documents in support of the "articles of Charges". The applicant was, therefore,not justified in asserting in his reply dated 31.7.91, Annexure A-6, that the charges were vague and imaginary.

8. In his reply dated 31.7.1991, the applicant sought inspection or copies of various documents, including those of Casual Labour Card and notings of the dealing clerk on PP-1 and PP-2 of his personal file with orders of APO III and AME I/MB. PP-1 and PP-2 of the personal file of the applicant were not included in Annexure III to the chargesheet. It included "PP-3 of the Personal File containing remarks of Shri S.P.Jutla, IOW/BLM (Now at MB) duly endorsed by AEN/SPC". Inspection or copy of PP-3 was not demanded. In paragraph 9 of the reply, it was asserted that "the remarks of IOW/BLM Sh.S.P.Jutla on PP-3 of my personal file that 'The signatures at page No.12-A are not my signatures' don't anywhere state that the working days as specified in the casual labour card were false. Further his remark is vague as it does not clarify the case file or the case of which page No.12-A has been referred

to." If for these reasons, inspection or copies of PP-1 and PP-2 of his personal file were not given to the applicant, no prejudice in defence can be said to have been caused to him. Other documents, except the Casual Labour Card, referred to in his reply dated 31.7.1991 may also be over-looked, as they did not appear to be material or relevant documents. So far as the Casual Labour Card was concerned, it was the basic document relied on by the Department in support of its articles of charges. There is no material on record to show that inspection of original Casual Labour Card was given to the applicant. In the counter paragraph 4.11, it has been asserted by the respondents that the "relevant and available documents were supplied to the applicant on 19.9.91 and 18.9.93." On 19.9.91, "photo stat copy of Appointment letter" was supplied to the applicant as per Annexure A-7. What documents were offered for inspection or supplied to the applicant on 18.9.93, is not clear from the materials placed on record. The applicant may, therefore, have reasonably felt prejudiced in his defence due to denial of a xeroxed copy or inspection of the original Casual Labour Card mentioned in Annexure III to the chargesheet.

9. The Seniority List of Casual Labours for the period between 1975 and 1986 and the Labour Distribution Register were neither referred to in Annexure III to the chargesheet, nor requisitoned in defence by the applicant, but considered and relied on by the Enquiry Officer. According to us, this has vitiated the enquiry and the punishment order.

10. The cases cited on either side do not require consideration, because they do not lay down any principle contrary to the principle followed by us in the present case. However, it needs mention that Shri B.S. Mainee,

the learned counsel for the applicant was not fair in citing only the case of **Raj Karan** v. **U.O.I.**, O.A. No.1358/95, decided on 22.8.1998 (supra) and in not citing the case of **Madan Kumar** v. **The General Manager, Northern Railway**, O.A. No.1997/96, decided on 5.11.1998 by the Principal Bench, though in both the cases, he was the counsel for the applicants and the nature of charges against the applicants in those cases were similar in nature to the charges in the present case. Apparent reason for suppressing the latter decision of the Tribunal was that it was decided against the applicant in that case, whereas the former case was decided in favour of the applicant in that case. Fairness demanded urging the point only after bringing both the cases to the notice of the Bench with their distinguishing features. In this connection, it appears necessary to remember that disciplinary cases cannot be put in a straitjacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often that difference may prove to be crucial. The same can also be said about the evidence adduced or materials placed in one case and that produced in another. Decided cases can be of help if there be a question of law, or if the question is about the applicability of some general rule of evidence or procedure. This apart, reference to decided cases is hardly apposite when the question before the Court or the Tribunal is whether there is compliance, non-compliance or substantial compliance with the principles of natural justice, or if any prejudice is caused to the delinquent officer due to infirmities in procedure followed during enquiry. In **Charan Singh** v. **State of Punjab**, AIR 1975 SC 246, the Supreme Court laid down this principle in a

criminal case in following words:

> "32. In the context of what value should be attached to the statements of the witnesses examined in this case our attention has been invited by the learned counsel for the appellants to a number of authorities. We have refrained from referring to those authorities because, in our opinion reference to those authorities is rather misplaced. The fate of the present case like that of every other criminal case depends upon its own facts and the intrinsic worth of the evidence adduced in the case rather than what was said about the evidence of witnesses in other decided cases in the context of facts of those cases. The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of the other facts of the case. Criminal cases cannot be put in a straitjacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often that difference may prove to be crucial. The same can also be said about the evidence adduced in one case and that produced in another. Decided cases can be of help if there be a question of law like the admissibility of evidence. Likewise, decided cases can be of help if the question be about the applicability of some general rule of evidence, e.g., the weight to be attached to the evidence of an accomplice. This apart, reference to decided cases hardly seems apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted."

11. To sum up, for the reasons stated in paragraphs 8 and 9 of this order, we are of the view that this O.A. deserves to be allowed. As a necessary consequence, after quashing the impugned orders, we would have ordinarily remitted the case to the Disciplinary Authority with liberty to re-open the enquiry and proceed

20

with it after giving copies or inspection of documents here-in-before mentioned, but in view of the date of chargesheet and initiation of enquiry, we think it would meet the ends of justice, if the applicant is directed to be reinstated in service without back wages or seniority in service, as was done in the case of **Raj Karan** (supra) and in similar other cases, one of which has been referred to in **Raj Karan's case.**

12. Accordingly this O.A. is allowed and the impugned orders of removal from service are hereby quashed. The applicant shall be reinstated in service within a period of one month from the date of receipt of a copy of this order, but without payment of any back wages, or restoration of seniority, or any other consequential relief. In the circumstances of the case, parties are directed to bear their costs as incurred.

(K.M.AGARWAL)
CHAIRMAN

(S.R. ADIGE)
VICE CHAIRMAN (A)