

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI BENCH
DELHI

DATED THE 28th DAY OF JUNE, 1999

CORAM : HON'BLE MR. R.K. AHOOJA, A.M.

HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO. 9 OF 1996

Surinder Pal S/o Late Sri Brij Nath
Sub Loco Cleaner, (Ex.)
Loco Shed, Northern Railway,
Luxer.

RESIDENTIAL ADDRESS

Surinder Pal C/o Sh. Surinder Kumar,
C-6/96 Lawrence Road,
New Delhi.

.... Applicant

C/A Shri G.P. Bhandari, Adv.

Versus

1. Union of India through
The General Manager,
Northern Railway Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway, Moradabad.

.... Respondents

(C/R Shri B.K. Agrawal, Adv. through Shri Rajeev Bansal)

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the
Administrative Tribunal Act 1985 to set aside and quash
the order dated 13.6.96 Annexure-A1 along with the
SLJ

rejection of appeal vide order dated 26.7.94 passed by respondents with a direction to ~~re-instate~~ the applicant from the post of Loco Cleaner with all consequential benefits of seniority, pay fixation, promotion etc. payment of wages from date of removal from service to date of ~~re-instatement~~ with interest @ 18% per annum along with cost.

2. The applicant was working as Sub-Loco Cleaner under the Loco Foreman, Loco Shed, Northern Railway, Moradabad. On 4.9.90 the respondents served on him suspension order dated 4.9.90, Annexure-A8 placing him under suspension with immediate effect. On the same day major charge sheet dated 15.7.91 was also served on him, Annexure-A9. The Disciplinary proceedings were commenced against him for the charge that from 15.7.76 to 14.9.84 the period of working under P.W.I./D.L.M. was not authentic working period as it is not supported by any valid document, nor verified by the competent authority. He got eligibility to apply for the post of Special Loco Cleaner. He submitted his defence on 26.7.91 Annexure-A10 and disputed the charge. The respondents supplied the documents demanded and proceeded to the enquiry. He was not permitted to examine the defence witness. The Enquiry Officer addressed the letter whereby he requested to disciplinary authority to arrange for production of personal file of the applicant, to depute somebody to produce the pay vouchers for the period from 15.7.76 to 14.9.84 to spare Shri Sharad Shahi and Akhtar Husain to appear as P.Ws. He submitted his representation Annexure-A11 dated 19.10.92, another representation Annexure-A12 dated 20.7.93 but no action was taken for production of the documents and examination of defence witnesses.

Only Shri Sharad Rahi was examined on 12.3.94 and his examination disclosed that examination of Shri V.K. Sharma was essential one, still V.K. Sharma was not examined as defence witness. Thus, the enquiry concluded was in an illegal manner, irregular manner as no proper opportunity was afforded to the applicant, hence this O.A. for the above said relief.

3. The defence of the applicant was to the effect that he joined as a casual labour on daily rate wages under P.W.I, Balamau on 15.7.76. He worked in different spells under him upto 14.9.84. He was re-engaged on 23.12.85 as a casual labour under the P.W.I, (Special) Shahjahanpur P.Q.R.S. Engineering Branch. On 4.11.87 respondent issued a circular inviting the applications for filling of some posts of some loco cleaners in Loco Shed in Moradabad Division in grade of Rs.750 - 940 from the persons who had rendered service as casual labour to the extent of 120 days, the eligibility conditions were his name should be on the live casual labour register, should have passed VIII class and not more than 28 years of age as on 31.10.85 along with minimum working as casual labours for 120 days. The applicant was eligible for the same, the posts were to be filled by way of regularisation of casual labours after verification of their casual labour service. The respondents after scrutinising the applications, deputed a team of Inspectors of Personnel Branch to verify the casual labours particulars submitted by them. The applicant's service record was verified by Shri B.K. Das, the Divisional Personnel Inspector Moradabad. He was subjected to a screening test and medical test and then absorbed as Special Loco Cleaner since 30.11.86 and was granted for

S.A.D.M.

regular pay scale of Rs.750 - 940 and also earned the increments thereof. The respondents resisted the claim of the applicant in respect of not affording proper opportunity during the disciplinary proceedings.

4. On perusal of the record, Annexure-A1 is the order of the Disciplinary Authority by which the applicant is removed from service with immediate effect but none of the parties have filed the appellate order in this respect. As the order of disciplinary authority merges in the order of the appellate authority, hence even if the order of Disciplinary Authority is a non speaking one, as the applicant failed to file the order of the appellate authority, hence the arguments in this respect cannot be accepted that the order of the appellate authority is non speaking one.

5. On perusal of Annexure-A10 we find that on page 4 of the same the applicant has mentioned the name of Shri Sanjai Kumar, B.K.Das, A.P. Srivastava as defence witnesses and also sought production of application form along with other documents and witnesses. If we peruse Annexure-A11 we find that the applicant has asked the enquiry officer to supply 9 documents mentioned in the list along with production of nine witnesses named in the list. Annexure-A12 is the reminder which was submitted before the Enquiry Officer on 20.7.93. Again on 12.3.94 request for examination of witnesses along with documents was made but we are not aware what orders have been passed on them.
 for the enquiry officer
 it is not necessary to accede ever request of the charged officer for submission of documents or for examination of defence witnesses but he has to

pass a speaking order for allowing or disallowing the request made by the charged officer. We further agree to the submissions that only relevant documents and defence witnesses deserves to be allowed to be submitted and examined and, if irrelevant documents are asked for or unnecessary defence witnesses are to be examined, the enquiry officer is entitled to reject the same.

6. The criteria for examining the disciplinary proceedings is whether the defence of the charged person is being prejudiced by non supply of the documents asked for or by not permitting the defence witnesses to be examined. If we peruse the defence of the applicant as stated above, he has a right to prove that he has worked ~~1~~ ^M from 15.7.76 to 14.9.84 ^{and} in different spells under P.W.I, Balamau, to prove these facts paid vouchers, examination of P.W.I, Balamau other casual labours with whom the applicant has worked and other relevant documents are material one.

7. As annexure-A13 the statement of Shri Sharad Kumar Rahi is filed which discloses that Shri B.K. Sharma is possessed of the record of the earlier period. Shri B.K. Sharma who is said to have maintained the casual labour register, his examination is also essential. The enquiry officer failed to afford a reasonable and proper opportunity to the applicant to defend his case which vitiates the entire proceedings.

8. The applicant's counsel further submitted that even if the earlier period of 15.7.76 to 14.9.84 is not taken into consideration he has worked from 23.12.85 ^{worked} and thus has more than 120 days with P.W.I (Special)

Shahjahanpur which was the essential condition or eligibility condition for some loco cleaner. It is not a question of eligibility condition but it is a case which reflects on the character of a person to secure the job by making averments which later on proves to be false one.

9. Before proceeding to enquiry, on perusal of the charge against the applicant, it appears that some preliminary enquiry was conducted, the report of which also not supplied to the applicant along with the evidence recorded in the same. (1998) 6 SCC 651. State of U.P. v. Shatrughan Lal and another relied by the applicant lays down the principal Bench if the charged employee is required to submit thereto to charge-sheet without having copies of the statement, he is deprived of opportunity of effective hearing. The supply of copies is necessary where witnesses making the statements are intended to be examined against him in regular employee. (1991 - 1994) Full Bench judgment 251 Shri Lal Singh v. The General Manager, Northern Railway Baroda House, New Delhi and in another lays down the proposition that if any case of securing appointment by producing fabricated casual labour certificate card, the charged officer requires the muster roll and the enquiry officer did not take sufficient steps to procure the same, it is a case of denial opportunity to defend.

10. Relying on the aforesaid reported pronouncements along with the judgment in O.A. No. 332/93 Som Prakash Misra v. Union of India and others decided on 23.9.98, Shri Mahesh Pal v. Union of India and others decided on 25.9.97, O.A. No. 1251/95 decided on 10.8.98, The

impugned order dated 13.6.94 Annexure-A1 (No.727-E/D and AR/9050 LRJ-30 and the appellate order in respect of the same is quashed. The applicant is reinstated in service without any back wages and consequential benefits during the period of enquiry, as so many changes might have been effected in the department. No order as to cost.

R. Venkatesan
MEMBER (J)

R. Venkatesan
MEMBER (A)