

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No. 902/96

(9)

New Delhi this the 7th day of January 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)  
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri Kamruddin  
S/o Shri Maleekey  
Ex. Substitute Loco Cleaner  
under Locoforeman  
Northern Railway  
Laskar

....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
3. The ~~Sr.~~ Divisional Mechanical Engineer  
Northern Railway  
Moradabad

....Respondents

(By Advocate: Shri B.S. Jain)

ORDER (Oral)

By Reddy, J.-

While the applicant was working as a Loco Cleaner he was served with the charge sheet on 2.6.91 alleging that he had committed forgery of the certificate that he had worked as a Casual Labour from 1.11.1977 to 30.1.1982 at Balamau Railway Station, in connivance with other employees to secure the appointment as Substitute Loco Cleaner. After holding an enquiry the applicant was removed from service by order dated 2.11.94. The appeal filed by him was rejected by order dated 8.2.96. Even before

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that appeal was disposed of, the applicant filed the present OA challenging the order of removal from service.

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2. It is contended by the learned counsel for the applicant that the enquiry is vitiated inasmuch as the applicant was not afforded proper opportunity to establish his innocence. The case of the applicant was that several documents which were crucial to establish his innocence were asked for on 19.6.91. The applicant has also given several names of departmental witnesses to examine in the enquiry but they were not produced by the department. It is, however, submitted that the sole witness who has been relied upon by the prosecution was not a reliable witness since he has also charge-sheeted by the department and hence he was under cloud.

3. Learned counsel for the respondents, however, strenuously contends that this is a clear case of forgery committed by the applicant. It was clear from the evidence on record that the applicant was not working as Casual Labour during the period from 1.11.77 to 30.1.1982 at Balamau and the certificate produced by him was a clear forgery inasmuch as Shri Jutla who purported to have signed the certificate was not even working at that time in the station. He also further contends that the Enquiry officer having found that the charges have been established against the applicant, it is not open to the Tribunal to re-appreciate the evidence and came to different finding.

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(11)

4. Learned counsel relies upon N.

Rajarathinam Vs. State of Tamil Nadu & Anr. 1997

(1) SLJ P.10 in which it was held that if all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant disciplinary authority is empowered to take appropriate decision as to the nature of finding. Learned counsel also cited in Apparel Export Promotion Council Vs. A.K. Chopra 1999 SCC (L&S) 405 held that this Tribunal cannot appreciate the evidence on record. We are afraid that these decisions have no application to the facts of the present case.

5. The moot question that is involved in this case is whether the applicant was afforded a proper opportunity to establish his innocence or not. The allegations against the applicant were that he was not working as a Casual Labour during the relevant period from 1.11.77 to 30.1.82 and that he produced the certificate having worked during that period and in order to secure the appointment subsequently in 1988. To establish that he had worked during the relevant period. The applicant sought for the following documents:-

1. Casual Labour Card
2. Copy of the appointment letter issued by the department
3. Original application Proforma.

4. Paid Vouchers containing for the period from 1.11.77 to 30.1.82 in respect of the payment made under the station Balamau. (2)

5. Specimen signatures of Sh. S.P. Jutla as recorded in his service record.

6. PP-I of the Personal file containing remarks of the dealing clerks in the case of the applicant.

7. Attendance Register of IOD/Balamau

6. The following witnesses were also required to be produced during the enquiry.

7. Shri Sanjay Kumar Dealing clerk, Shri A.P. Srivastava, APO who signed the appointment letter and Shri B.K. Dass DPI Moradabad, who signed the verification certificate.

8. It is stated in the counter affidavit that the documents could not be produced as they were not available due to the lapse of time. It is also stated in the counter affidavit that the witnesses were not produced as they were themselves charge-sheeted in the similar cases as having committed fraud in giving the certificates. A perusal of the documents leaves us in no doubt that they are relevant documents which would throw light on the question of the applicant's working during the relevant period. It is also not the case of the respondents that they were not relevant. Thus, it is clear that the crucial evidence i.e. sought to be relied upon by the applicant in the shape of the

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documents was not supplied to the applicant. It is also not in dispute that the witnesses asked to be produced were not material witnesses.

(B)

9. In OA-135/96 which has been decided on 15.11.99 by the Principal Bench an identical issue has come up for discussion on similar facts and considering all the aspects of the matter and elaborately discussing the case law on the point, the Tribunal found that the proper opportunity was denied to the applicant therein as the documents were not supplied and thus allowed the OA. Agreeing with the reasons and the conclusions in the above order and following the same, we have to hold in this case that the denial of supply of the crucial documents in the case to the applicant has deprived him of his right to defend his case and to establish his innocence. Learned counsel cited State Bank of Patiala & Ors. vs. S.K. Sharma reported as 1996 (2) SLR SC 631 in support of his contention that the delinquent should show prejudice before complaining any violation of rules or principles of natural justice. It is not correct to say that the applicant is not prejudiced for non-supply of the documents asked for by him. The documents are very crucial to establish his innocence. In fact the entire case depended upon the documents and it cannot be said that there is no prejudice to his defence. The enquiry held is, therefore, vitiated and hence the impugned order dated 2.11.1994 and the appellate order are also liable to be quashed.

*Chm*

10. In the result the OA is allowed and the order of the Disciplinary Authority dated 2.11.94 and Appellate Authority are quashed. Respondents are directed to reinstate the applicant within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, the applicant is not entitled to claim any back wages and seniority on the basis of the intervening period. No costs.

*R.K. Ahuja*  
(R.K. Ahuja)  
Member (A)

cc.

*V. Raghavendra*  
(V. Raghavendra Reddy)  
Vice-Chairman (J)

*VA*