

OA No.1854/97

New Delhi, this 10th day of May, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Jagdish Prasad Pal
0114, Geeta Enclave
Vani Vihar, Uttam Nagar, New Delhi .. Applicant

(By Shri G.D.Bhandari, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Divisional Railway Manager
Northern Railway
Moradabad

.. Respondents

(By Shri R.L.Dhawan, Advocate)

ORDER(oral)

By Reddy, J. -

The applicant, on the basis of the certificate produced by him that he had worked as casual labour for about 120 days, was appointed as Sub Loco Cleaner on 14.6.88. Subsequently, on verification as it was found that the certificate produced by him was false, a memo of charge has been served on 10.1.91 alleging that he produced false certificate for securing employment. Applicant denied the charge and hence DE has been initiated and an enquiry officer (EO, for short) was appointed. He submitted his report holding that the applicant was guilty of the charge, whereupon the disciplinary authority passed the impugned order removing the applicant from service by order dated 21.10.94. Appeal filed by the applicant was also rejected on 5.12.94. Though the applicant filed review on 3.7.95, as it has remained undisposed of, he filed the present OA.



2. Learned counsel for the applicant submits that the material documents on which prosecution relied upon were not furnished to the applicant inspite of the request made by him. Findings are based on conjectures and surmises and there was no evidence to prove the charge. Learned counsel for respondents raised the objection as to limitation and submits, on merits that relevant documents were supplied and the applicant was removed after valid enquiry and on clear evidence.

3. We have considered the pleadings carefully and heard the arguments advanced by either side.

4. There is no substance in the objection of limitation. As the appeal was rejected on 3.7.95, the applicant filed review on 15.9.95, but it was not disposed of when he filed OA. As he was awaiting the order in review, he was entitled to await for its disposal. It is now stated by the respondents that review was disposed of on 1.2.96. In the rejoinder, the applicant stated that the order was not served on him. In the circumstances, it cannot be said that the OA was barred by limitation.

5. The main allegation against the applicant in the present OA is that he had produced false casual labour card stating that he had worked for the period from 15.6.78 to 30.5.82 as casual labour under Inspector of Works, Balamau (IWO, BLM for short) for the purpose of securing appointment. Alongwith the charge memo two documents were cited in support of the case against the applicant and they are (i) CL card and (ii) PP2 of

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personal file containing remarks of Shri S.P.Jutla, 10W/BLM. One witness was cited, he is S.P.Jutla. The case of the applicant was that he had worked for the relevant period and he had produced the genuine casual labour card signed by the then Supervisor Shri Qureshi. During enquiry, he requested for the following documents: (i) labour record register of casual labour of 10W/BLM for the relevant period, (ii) paid vouchers of casual labours of 10W/BLM for the relevant period, (iii) casual labour card of the applicant in original, (iv) verification report of Hari Om Agarwal, 100W/BLM and B.K.Dass who verified the working of the applicant for the relevant period and (v) few other documents. However none of these documents have been supplied to the applicant. Regarding paid vouchers, it was stated that they were in the custody of Sr. DAO. Regarding the report it was stated that it could not be produced in the interest of security of the STATE since the charge has been established on the basis of the entries in the register. The paid vouchers could not be produced as they were destroyed as per the Railway Policy after a certain period. In the present case the defence of the applicant solely depends upon the register where the name of applicant was admittedly mentioned during the relevant period at page No.64. The EO in his findings has clearly stated that the name of applicant does appear at Page No.64 therein but the same was not in the manner as it should have been. Thus a doubt was expressed regarding the manner of recording of the name of the applicant in the register. The casual labour card is the basis for the allegation of forgery and original of the same is a valid piece of evidence.

CAB

The report of B.K.Dass and R.K.Aggarwal who verified the working period of the applicant during the relevant time, prior to his appointment, but the report has not been produced and no reason given in the Annexure nor were they examined.

6. Moreover only one person Shri S.P.Jutla was examined who was said to have deposed that the signature on the CL card did not appear as his signature. Certificate was issued in 1981 and in 1994, he denies his signature. It has also come on record that PW also was alleged to have connived with other officers in issuing false CL cards. He was also served with charge memo.


7. The Full Bench of this Tribunal in OA No.486/90 decided on 31.8.93 in the case of Lal Singh vs. GM/Northern Railway reported in CAT Full Bench Cases Vol.1, has taken the view after elaborate consideration of the effect of non-supply of material documents that the muster roll is the valid proof of evidence for establishing the petitioner's case that he worked as a casual labour during the relevant periods. The petitioner could not have himself produced the same as they were in the custody of the concerned authority. The EU therefore was not justified in not getting the muster rolls produced as there was no real difficulty or hurdle in getting them produced. The ratio of the Full Bench judgement is squarely applicable to the instant case. The facts are almost identical. In the instant case, the documents like Casual labour card, C.L.Register, paid vouchers etc. being an important piece of evidence for the purpose of disproving the case

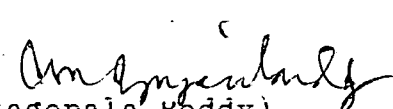


were not supplied and no valid reasons have been given for not producing the same. We have no hesitation to hold that the applicant was denied the reasonable opportunity in his defence.

8. In view of the aforesaid discussions, the OA succeeds and is accordingly allowed. Impugned orders of the disciplinary authority, appellate authority as also the revisional authority are quashed. Respondents are directed to reinstate the applicant in service within a period of three months from the date of receipt of a copy of this order.

9. Learned counsel for the applicant insists on payment of backwages. However we direct payment of 50% of the backwages to the applicant which is agreed to by the learned counsel for the applicant.


(Smt. Shanta Shastry)
Member(A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

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