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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

DATED: THE 28th DAY OF ~~JOPE~~ 1999

CORAM : HON'BLE MR. R.K.AHOJA, A.M.
HON'BLE MR. S.L.JAIN, J.M.

Original Application No. 1874/97

Gopal Krishna S/o Shri Ram Krishna,
Loco Cleaner T.No. 67,
Under Loco Foreman,
Northern Railway, Loco Shed,
Saharanpur.

RESIDENTIAL ADDRESS

Gopal Krishna,
364, Chota Chappiara,
Chawri Bazar, Delhi.

.... Applicant

(C/a Shri G.D. Bhandari, Adv.)

Versus

1. Union of India through the General Manager,
Northern Railway, HQ/Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
Ambala Cantt.

.... Respondents

(C/R Shri R.C. Dhanwan, Adv.)

ORDER

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

The applicant has challenged his order of removal
passed by the Appellate Authority dated 3.8.96 and

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direction to the respondents to re-instate him in service with all consequential benefits, seniority, promotion, arrears along with interest @ 24% per annum.

2. The applicant was initially appointed as a casual labour under the P.W.I. Khatauli Railway Station, worked under him from 2.6.97 to 2.5.97. He was allowed a temporary status with all usual benefits and his name finds place in the live casual register as maintained by the respondents. The respondents conducted a screening of casual labour for which purpose a Screening Committee of three Group 'B' officers was constituted, the screening was held in 1996, the result was declared and the name of the applicant finds place in the same at serial no.29. At the time of screening the complete record about the appointment of the applicant was produced by the respondents before the Screening Committee. After a medical test and physical test he was appointed as loco cleaner on 27.1.91 on regular basis against permanent substantive vacancy.

3. The respondents issued a major penalty chargesheet which was served on the applicant on 30.4.81, Annexure-A. He also submitted his representation dated 15.5.87, the erstwhile Delhi Division was bifurcated in two Division Delhi and Ambala and as the applicant was working at Saharanpur it came within the jurisdiction of Ambala Division. He claims that as per representation the S.F. file was closed even at erstwhile Delhi Division. On 2.9.93 he was informed that S.F. file is still pending against him. He submitted another representation dated 18.9.93, enquiry officer was appointed, enquiry commenced and during the course of enquiry he was not supplied

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with the charge sheet, relied documents and no fair and proper opportunity to defend was afforded to him. He was found guilty and punishment of removal from service was passed which was confirmed even in appeal. Hence this O.A. for the above said relief.

4. The respondents resisted the claim and submitted for dismissal of the O.A. along with cost.

5. Baldev Kumar was examined on 22.6.94 and Amar Singh was examined on 30.12.95.

6. Annexure A16 is dated 25.1.95 by which the applicant in para 5 claimed that the relied upon relevant documents demanded by the defence side vide representation dated July 94 (A 16) were not supplied and a request is made for early consideration. A-16 dated 7.7.96/29.7.96 is a request by and on behalf of the applicant for supply of the documents. Annexure-A21 dated 30.10.95 is the letter by E.O. to the effect that relied upon the document is demanded by the accused and is to deliver under receipt which is enclosed herewith. Thus it is apparent that till 1.1.95 photo copy of casual labour service card was not supplied to the applicant and enquiry commenced Baldev Kumar was examined on 22.6.94. Rest of the documents were even not supplied to the applicant till last.

7. Amar Singh was examined as P.W. 2 ^{who} has conducted the preliminary enquiry, his report was relied upon document which was not supplied to the applicant.

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8. Baldeo Kumar was examined on 22.6.94 and produced the record. ~~More~~ production of the record is not sufficient to say that ~~the~~ life casual register was produced, attendance register was produced, paid up vouchers were produced. It may be stated that the said documents were asked by the applicant since the very beginning and the respondents did not supply the same to the applicant or did not report the ~~fact~~ fact that they do not exist or they are weeded.

9. The said documents were essential to defend the applicant's case. Thus the defence of the applicant is prejudiced.

10. On perusal of the statement of Amar Singh along with his report Annexure-A20 we are of the opinion ^{and} that he conducted the enquiry/report is based on report of some other officials.

11. (1991 - 1994) Full Bench judgment 251 Shri Lal Singh v. G.M. Northern Railway, Baroda House, New Delhi ^{if} and another lays down the law that/in any case of securing appointment while 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 of opportunity to defend.

12. In O.A.No.332/93 Om Prakash Misra v. Union of India and others decided on 23.9.98, O.A.No.1251 decided on 10.8.98 and Shri Mahesh Pal v. Union of India and others decided on 2.5.97, the same principle of law was laid down.

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13. This is a case where disciplinary enquiry commenced ~~in~~ in the year 1993 and could not be fairly held due to non observance of rule of fair play and natural justice. In such circumstance we do not think it proper particularly looking to the facts of the case which are stated above to grant a liberty to the respondents to continue enquiry again from particular stage.

14. In the result O.A. is allowed, penalty order passed by A.M.E.(O.P.) U.M.B.(Annexure-B), appellate order passed by Divisional Office Ambala, Annexure-B2 are quashed. The applicant is ~~re-instated~~ re-instated in services without any back wages and consequential benefits ~~in~~ during the period of enquiry, ^{as} so many changes might have been effected in the department.. No order as to cost.

Al-Sami
JUDICIAL MEMBER

Rekha
ADMINISTRATIVE MEMBER