

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2607/97

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

New Delhi, this the 15th day of May, 2000

Mahipal
@ Mahipal Singh
s/o Shri Bhailoo
Ex. Sub Loco Cleaner
Northern Railway/Moradabad
r/o Mahipal Singh
c/o Shri Jagdish Pal
0114, Geeta Enclave Vani Vihar
Uttam Nagar
New Delhi.

... Applicant

(By Shri G.D.Bhandari, Advocate)

Vs.

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

... Respondents

(By Shri B.S.Jain, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant was originally appointed on 1.7.1978 as casual labour Khallasi by Inspector of Works/BLM. Since then he was working as casual labour Khallasi. Subsequently he was appointed as Sub-Lococleaner after verifying that he fulfilled all the required conditions for regularisation on 3.8.1988. On the ground that he had secured the appointment by producing a false and bogus casual labour card, he was issued a major penalty charge sheet on 9.7.1991. Since the applicant denied the charge, an enquiry was conducted and disciplinary authority removed the applicant from service, by the



impugned order dated 5.10.1994 which had been confirmed by the appellate authority by its order dated 15.11.1995.

2. Learned counsel for the applicant Shri G.D.Bhandari contends that the evidence of Shri Jutla who is the main witness in this case, ^{Cannot be relied upon as he} was himself issued the charge sheet alleging that he connived with the employees in issuing the casual labour card. As his evidence is a tainted testimony, it should not have been relied upon. It is also contended that the mere denial of the signature by Shri Jutla after a lapse of 18 years cannot form the sole basis for imposing a drastic punishment of removal. It was also vehemently contended that the enquiry itself was vitiated as the material documents relied upon, i.e., the original casual labour card, etc. were not supplied to the applicant which were relevant piece of evidence to disprove the case. The learned counsel relies upon Full Bench judgement in Lal Singh Vs. Union of India & Ors., OA No.486/90, CAT, Principal Bench reported in CAT's Full Bench Judgments (1991-94). It is lastly contended that appellate authority has disposed of the appeal in total violation of Rule 22(i) & (ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 and hence the impugned order of the appellate authority is liable to be set aside.



3. Learned counsel for the respondents however, raised the preliminary objection as to limitation. He however justifies the action taken by the disciplinary authority as well as the appellate authority.

4. We have given careful considerations to the pleadings and the arguments advanced by the learned counsel on either side.

5. The preliminary objection as to the limitation, in our view, is not tenable. In this case, the appeal was rejected on 15.11.1995 against which review was filed on 2.2.1996. Though the review has been entertained, according to the applicant it was not disposed till the applicant filed the present OA. It is stated that he came to know about the dismissal of the rejection of the review petition on 30.4.1997. But in the reply, the respondents filed the copy of the order rejecting the review petition wherein it was stated that it was dismissed on 12.7.1996. However, it is the case of the applicant that these orders were not served upon him. (para 4.32) These averments were not controverted by the respondents except stating that the revision petition has been rejected by the order dated 12.7.1996. In the circumstances, when the order of revision petition has not been served upon the applicant, it cannot be said that the period of limitation starts from the date of the order of the revision petition, dated 12.7.1996. In the circumstances, it cannot be said that the OA is barred by limitation.



6. In this case the main allegation against the applicant was that he has produced a fabricated and bogus casual labour certificate showing that they have worked as casual labour for the period from 1.7.1978 to 14.4.1981. The applicant pleaded that he has in fact worked as casual labour during the said period and that the casual labour card was issued by Mr. S.P.Jutla, who was the Inspector of Works, after verification by Mr. B.K.Dass, the Divisional Personnel Inspector/Moradabad and counter signed by Shri H.O. Aggarwal, IOW/BLM. The prosecution sought to examine only ~~by~~ ⁴ Shri Mr. Jutla and sought to rely upon the documents, namely, a casual labour card and PP-1 page of the personal file containing remarks of Shri Jutla. During the course of the enquiry one more witness ⁴ Mr. Laximanarayana was examined in order to prove the case.

7. The applicant filed an application for the production of the following documents:

1. Muster roll
2. PP1 page of personal file
3. Verification report
4. Paid vouchers from 1.7.1978 to 14.4.1981
and
5. Specimen signatures of Mr.S.P.Jutla, PW1.

8. But they were not supplied for one reason or the other. It was stated that PP-1 page of personal file of the applicant are not relevant and the same reason was given for verification report.



The paid vouchers for the relevant period was stated by the respondents were destroyed as per the proceedings dated 1.6.1992. In this case the paid vouchers and the verification report are important documents in disproving the case.

9. It is not disputed that the applicant's name was found in the Live Casual Labour Register but the enquiry officer says that the name of the applicant was found on page No.73 in the Live Casual Labour Register. But the same was not supplied, only on the ground that the casual labour register was not relied upon in the vigilance proceedings dated 23.11.1992. These documents were not supplied to the applicant nor ^{there report of} the vigilance inspector who has given report, the casual labour register was ~~not~~ examined. In the back ground of these facts, the non supply of the vital piece of evidence i.e. verification report, PP1, paid vouchers, which were sought to be relied upon by the applicant assumes importance.

10. In Lal Singh Vs. G.M NR, OA No.460/90 decided on 10.8.1993 reported in Full Bench Judgment, CAT 1991-94 Volume-3, on identical facts, the non supply of muster role was held to be very valuable piece of evidence for establishing the case of the petitioner therein, who was allowed to have not worked as casual casual labour during the relevant period. It was also found that the petitioner could not have himself produced as it was in the custody of the concerned authority. Full Bench has allowed the OA and the order of the disciplinary authority was set-aside. Following the ratio of the said Full Bench



it has to be allowed that the non supply of the above documents, namely, verification report, paid vouchers from 1.7.1978 to 14.4.1981, PP1 of personal file, being vital piece of evidence, the OA is to be allowed.

11. The OA succeeds. The impugned order of disciplinary authority, appellate authority and the revisional authority are quashed. The respondents are directed to reinstate the applicant in service within three months from the date of receipt of a copy of this order. In the facts and circumstances of the case, if the applicant files an application that he was not in a gainful employment during the interregnum period, applicant is entitled for 50% of back wages. The OA is accordingly allowed. No costs.

Shanta S
(SMT. SHANTA SHAstry)
MEMBER(A)

Comptypewritten
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/