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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2989/97

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

New Delhi, this the 19th day of May, 2000

Shri Dinesh Bhushan Sharma
s/o Shri Avadh Behari Lal Sharma
Ex. Sub. Loco Cleaner
Under Loco Foreman
Northern Railway
Moradabad
r/o Vishwash Nagar
Sahadara. Applicant

(By Shri B.S.Mainee with Shri G.D.Bhandari, Advocate)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Moradabad.
3. The Asstt. Mechanical Engineer
Northern Railway
Moradabad. Respondents

(By Shri B.S.Jain, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant had worked as casual labour in the Office of Inspector of Works, Northern Railway between the period 1978 and 1981 for a total number of days of 221. A copy of the casual labour card is at Annexure-A3. He was subsequently duly interviewed and after satisfying that he has worked for more than 120 days, he was appointed as Substitute Loco Cleaner in July, 1988. He was however served with the charge sheet on 11.10.1989 alleging that he secured the job by producing forged casual labour card. The applicant denied the charges and hence a departmental enquiry was conducted and he was found guilty. The



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disciplinary authority passed the impugned order imposing the punishment of removal from service vide order dated 8.8.1997. It was confirmed by the appellate authority vide order dated 15.10.1997. The present OA is, therefore, filed questioning the above orders of removal.

2. The learned counsel for the applicant vehemently contends that this is a case of no evidence and that the enquiry is vitiated as the material documents were not supplied. It was also contended that the key defence witnesses who are the railway officers are not summoned by the enquiry officer. Hence their evidence was not made available which would have gone a long way in disproving the case against the applicant.

3. The learned counsel for the respondents, Shri B.S.Jain, refuted the contentions raised by the learned counsel for the applicant and argues that the evidence of the two prosecution witnesses and also the documentary evidence in this case is sufficient to establish the guilt of the applicant and agreeing with the findings of the enquiry officer the disciplinary authority imposed the punishment which has been confirmed by the appellate authority. In the circumstances, the learned counsel for the respondents submits that the Tribunal in the exercise of its jurisdiction of judicial review, will not normally go into the correctness of the findings. It is also contended that all available relevant documents were supplied to the applicant hence there is no infirmity in the enquiry.



4. We have carefully perused the pleadings and considered the arguments advanced by the learned counsel on either side.

5. The gravamen of the charge against the applicant is that he has not worked as casual labour during the period in question. In the list of witnesses supplied along with the charge memo only one witness was mentioned, i.e., IOW/BLM. The name of the said witness was not however, given in the list. In the list of documents, the letter dated 19.8.1989 of IOW/BLM is the only document shown in support of the charge. However, during the enquiry two witnesses were examined and they are Shri H.O. Aggarwal and IOW, BLM who had made an enquiry as to the working days of the applicant as casual labour for the purpose of appointing him as Substitute Loco Cleaner. The other witness, Mr. Jutla he is also IOW/BLM worked for a brief period during the period when the applicant was alleged to have ~~been~~ worked as casual labour.

6. In the OA it is clearly stated by the applicant that he had sought some important documents of Muster Roll, Paid Vouchers, etc. which were not produced by the respondents. In the counter affidavit it has been stated that all the relevant documents and available documents were supplied to the applicant. In this case as the allegation being that the applicant had not worked during the relevant period it was incumbent upon the department to have supplied the

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documents, namely, the paid vouchers, the Live Casual Labour Register and also the Muster Roll which would clinch the issue as to the working of the applicant.

7. The letter dated 19.8.1989 alleged to have written by IOW/BLM was not supplied to the applicant.

8. The case of the applicant that he has actually worked during the period as casual labour. Shri Hari Om Aggarwal, PW2, having verified his working days he submitted a report and on the basis of his report, the applicant was appointed in 1989. The said report of Shri Hari Om Aggarwal is not supplied to the applicant nor is it produced during the enquiry. The only ground taken was they were not available with the department. It cannot be disputed that these documents were vital piece of evidence for the applicant to disprove the allegations against him. It cannot also be disputed that the applicant should be provided with all the material documents which are in the custody of the department. The learned counsel for the respondents however points out that the documents could not be supplied because they were destroyed in view of the proceedings initiated by the Railways. But these proceedings were not produced in spite of requests made by the applicant. Even assuming for argument's sake that these documents were destroyed still it would not make any difference to the case of the respondents. It would not absolve the respondents from supplying the material documents.

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9. In Lal Singh Vs. General Manager, Northern Railway, OA No.486/90, Full Bench order dated 10.8.1993 (reported in the FB of the CAT 1991-94), an identical point has come up for discussion, where on the ground that the Muster Roll being the valuable piece of evidence was not supplied, which was in the custody of the respondents, it was held that the applicant was denied the reasonable opportunity to defend his case. Following the above, the enquiry has to be held as vitiated.

10. Even on merits, we are of the view that the contentions raised by the applicant should ^{be} upheld. In the evidence of Shri H.O. Aggarwal, it is clearly stated that the record of the casual labour card which was available in his office has been taken away by Senior Personnel Inspector of Headquarters Office, Baroda House, New Delhi on 30.5.1990 and part of casual labour card is at AEN Office, Hardoi, Allahabad. He also stated that on the availability of the above record, he could certify the working days of the Substitute Loco Cleaner. Shri S.P. Jutla denied his signature on the casual labour card. A copy of the casual labour card is at Annexure-A3. On a perusal of the said document, it is evident that the applicant has worked ^{for} 221 days. However, IOW/BLM under whom the applicant worked for more than 120 days was not examined. It is also not in dispute that the requisite number of days for entitlement of appointment as casual labour on regular basis was 120 days. Thus, even taking into consideration the evidence of PW-I and the documents filed in this case,



without going into the appreciation of the evidence, it can be said that there is absolutely no evidence to support the charge.

11. In view of the above facts and circumstances, the OA is allowed and the impugned orders of the disciplinary authority and the appellate authority are quashed. The respondents are directed to reinstate the applicant immediately with all consequential benefits. In view of the facts of the case, we direct the respondents to pay 50% of the back wages subject to the production of certificate that the applicant was not in any gainful employment during the interregnum period. No costs.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER(A)

Rajagopal Reddy

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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