

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 777/97

New Delhi, this the 4th day of August, 2000.

Hon'ble Mr.Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S.Tampi, Member (A)

(3A)

1. Shri Prem Narain
S/o Shri Harnam Singh
Ex. Tube Cleaner
2. Shri Arun Kumar
s/o Shri Balwant Singh
Ex. Callman
3. Shri Srichand
s/o Shri Rattan Singh
M.S. Khallasi
4. Shri Virender Kumar Sharma
s/o Shri Babu Ram Sharma
Ex. Tube cleaner

all under Locoshed, Northern Railway
Saharanpur

presently r/o T-30/12-A Baljeet Nagar
New Delhi - 8.

....Applicants

(By Mrs. Meenu, Proxy counsel for Sh. 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
State Entry Road
New Delhi
3. The Divisional Mechanical Engineer
Northern Railway
Ambala Cantt.

....Respondents

(By Sh. R.L. Dhawan)

P.T.O.

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ORDER (ORAL)

(35)

By Hon'ble Mr. Justice V.Raja Gopala Reddy, VC (J)

Applicants are appointed as Substitute Khalasis in Loco-shed, Saharanpur since 1985. They were served with Memorandum Charge-sheet dt. 22-11-1993 alleging that they had taken the appointment as Loco-shed Foreman, producing a bogus appointment letter which was not available on record. After an inquiry, they were removed from service by the impugnd order dt. 14-06-96. The appeal filed was also dismissed by the order dt. 24-12-96. The present OA is filed, challenging their removal.

2. The only contention of the learned counsel for the applicant is that, there was no evidence in this case to support the charge. It is also contended that the inquiry officer that placing reliance upon the preliminary inquiry reports which were recorded behind the back of the applicant, is a wholly irregular and im-permissible under law.

3. Learned counsel for the respondents submits that the documentary evidence is sufficient to prove the charge against the applicant, and as the findings have been reached on the basis of the evidence, the Tribunal cannot interfere with them while exercising judicial review jurisdiction.

4. We have given careful consideration to the contentions of the applicant. Admittedly no witness has been examined during the inquiry, the statement recorded by the preliminary inquiry officer of Mr. Chaman Lal & Mr. Tarsem Lal were relied upon by the inquiry officer in reaching the conclusions. The only reason given for not examining the witnesses is that, they had retired from service. Law is well settled

(CR)

(36)

that the statements of persons which were recorded behind the back of the charged officer cannot be the basis for condemning an officer unless the deponents were examined. What ever may be the reason for not examining the witnesses, unless they were made available for testing the veracity of their depositions the serious charge against the applicant cannot be found established. It is also not correct to contend that the burden lies upon the applicant to disprove the charge. It may be true that the burden shifts from time to time, depending upon the evidence placed on record. Where no evidence has been placed by the prosecution at the initially stage, the question of shifting the burden on to the charged officer would not arise. In Orissa Corporation and Another Vs. Ananda Chandra Prusty 1996 (8) Scale P-153, Supreme Court observed that in a disciplinary inquiry the question of burden, depending upon the charges and the nature of explanation putforward by the delinquent officer would be placed upon the charged officer. There is nothing for the Charged Officer to explain in the instant case. He has denied the charges in the initially stages itself, hence the burden rests upon the prosecution, intially to show that the applicant has committed the charge.

5. In Director General, Indian Council of Medical Research & Ors. Vs. Dr. Anil Kumar Ghosh & Anr., SCSLJ 1998 (2) P-196, Dt. 6-8-1998, relied upon by learned cousel for respondents, it was held that principles of natural justice were not violated when the documents were accepted before examining the municipal officials. It was contended that the first officers should examined before the documents were



placed in evidence. Documents were sought to be introduced in that case were registers maintained regularly in the Municipal Office. That was not a case where no witness was examined during the enquiry. 31

6. The learned counsel for the respondents raised an objection as to maintainability the OA. The contention is that the applicant had not exhausted the alternative remedy of review provided in R-24 (3) of the Railway Servants (disciplinary and appeal Rules) 1968. Learned counsel also relies upon the judgement of Chandigarh Bench in OA 590/96 in S.K.Dutta Vs. Union of India & Ors. decided on 4-11-1996. It should be noted that the OA which was filed in 1997 has been admitted. Though this objection was taken in the counter admitted, no objection was raised before the Court when the OA was admitted. In our view the respondents should have taken this preliminary objection before the OA was admitted and if such objection had been taken the OA without being admitted, the OA could have been disposed of directing the applicant to file a review. At this stage after 4 years of passing the impugned order, we do not, think that it is in the interest of justice to send back the applicant to exhaust the alternative remedy of Review. It is at the descretion for the Court to admit a case even when an alternative remedy was not exhausted. It should be noted that the judgement of the Chandigarh Bench was disposed of on 4-11-97 on the preliminary objection and it is seen the OA itself was filed in 1997. The decision by the Chandigarh Bench cannot be a precedent in our case, because the so much of time had elapsed from the date of the impugned order and no preliminary objection was taken before OA was

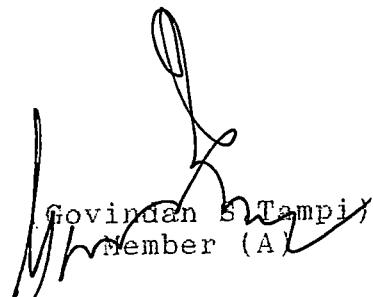
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admitted. The applicant, infact, has been removed once in 1987 and the same has been set aside by the Tribunal directing fresh enquiry which culminated in the present impugned order. It should also be noted that the applicant has exhausted the statutory remedy of appeal. In view of the facts, in the present case, we hold that the objection is not sustainable.

(38)

7. Further, we have allowed another similar matter on similar facts and on simialr points of Law in Sita Ram Vs. Union of India and Ors. in OA No. 1070/97, decided on 10-05-2000, we find that the facts and charges are the same and in that case also no witness has been examined, and the statements were relied upon.

8. In the circumstances the OA is allowed and the respondents are directed to reinstate the applicant within 3 months from the date of receipt of a copy of this order. We order, however, the payment of 50 % back wages to the applicant.


Govindan S Tampli
Member (A)


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

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