

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1257/2000

New Delhi this the 7th day of February, 2001. (10)

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Shri Avinash Chander
S/o Shri Shyam Sunder Lal
C/o Shri R.P. Saxena
Near Kumar Type School
Krishnapuri, Line Par, Moradabad. ... Applicant

(By Advocate Shri B.S. Mainee)

-versus-

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

(By Advocate Shri R.P. Agarwal)

O R D E R (ORAL)

Shri S.A.T. Rizvi, Member (A):

Applicant in this OA was initially engaged as a Casual Labour in 1977 and worked in that capacity upto 1978. Thereafter he applied for the post of Sub-Loco Cleaner sometimes in 1987 and was appointed as such. Later he was charged essentially for forgery and was ultimately removed from service vide disciplinary authority's orders dated 18.5.1994. Aggrieved by this order, the applicant went in appeal which was rejected by the appellate authority on 26.8.1994. Aggrieved by these orders, the present OA has been filed in the second round of litigation. Earlier, the applicant had approached this Tribunal by OA No.1291/1995 which

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was decided on 25.8.1999. By the aforesaid order, the application was allowed and the order passed by the appellate authority dated 26.8.1994 was quashed and set aside and the matter was remitted back to the appellate authority to consider the applicant's appeal and also give him personal hearing.

2. In compliance of the aforesaid directions of this Tribunal, the appellate authority has reconsidered the matter and has again rejected the appeal filed by the applicant thereby upholding the order of removal passed by the disciplinary authority. In the present OA, the applicant is aggrieved by this order also.

3. We have heard the rival contentions raised by the learned counsel and have perused the material placed on record.

4. We find that in the first instance, the applicant was charged in the following terms:-

- "i. That with his connivance a forgery was committed wherein the period of his working under IOW/Spl./CH from 19/12/77 to 14/3/78, Kanoongo/LMC/MB from 1/1/83 to contd. while it is supported neither by any valid document nor verified by any competent authority.
- ii. That he derived benefit out of the forgery and became eligible to apply for the post of Loco Cleaner the pre-requisite condition of which was prior working to 4/10/78.
- iii. That he managed to secure employment as sub.Loco cleaner LF/MB by manipulation while he did not fulfil the condition and

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was not eligible to apply for the post of Loco Cleaner.

iv. When required to re-verify his original working the relevant record was not available. It is inferred that the original working shown by him is forged. Thus Shri Avinas Chandra S/O Shri Shyam Sunder Lal Sub. Loco Cleaner LF/MB to maintain absolute integrity and acted in a manner unbecoming Rly. Servant, thus he contravened rule 3.1(i) and (iii) of RS. Rule -1966."

(12)

Based on the aforesaid charge, the enquiry officer gave a comprehensive report dated 26.10.1992 which exonerated the applicant. The disciplinary authority not agreeing with the conclusions reached by the enquiry officer issued a show-cause-notice to the applicant by stating his reasons of difference with the findings of the enquiry officer. This is what the appellate authority has stated in the aforesaid show-cause-notice:-

"(a). The recorded D.O.B. is 15.9.1959 and so on the crucial date of 31.10.1987, he was of over 28 years, while in circular No.727-E/EP-cleaner/Rectt-87 the required age limit for such appointment was upto 28 years. So he should not have been appointed being over age.

(b). The original period of working shown in application viz. 19.12.77 to 14.3.78 has been verified neither by oral nor by documentary evidence and so its benefits is not permissible.

(c). The entries of working period shown in the application form, the dates viz. 14.3.78 and 31.5.87 are over written. These have neither been initiated nor verified by the forwarding IOW/Estate/MB which is sufficient to prove it as false."

This was replied to by the applicant who had

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stated that the appellate authority had levelled fresh charges different from the charges earlier communicated to the applicant for which there was no basis. This is what the applicant had mentioned in this regard:-

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"a). This is a new point of blemish. It was no where included in the articles of charges of the relevant SF/5 as such stands to be null and void.

b). What sort of application is mentioned here is ambiguous and needs vivid clarification. However, it is manifest to mention that this period has been got verified as discussed and expatiated by the learned E.O. in his D&AR enquiry report.

c). This is also a new point of blemish and was not included in the articles of charge appended in relevant SF/5. And so it is equally null and void."

After considering the aforesaid representation, the disciplinary authority passed the impugned order of 18.5.1994 stating therein that the experience of the applicant as Casual Labourer for the period from

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19.12.1977 to 14.3.1978 was not supported by evidence. (14) The same could not be verified from any of the documents nor oral evidence was available in support thereof. That the applicant did not fulfil the age qualification has also been mentioned as a reason which weighed with the disciplinary authority. Of these, according to the learned counsel appearing for the applicant, the latter, namely reference to the age qualification is totally unwarranted as no such thing was mentioned by way of a charge when the charge was originally served on the applicant.

5. In order to appreciate the possible reasons which might have weighed with the disciplinary authority and the appellate authority especially when the latter authority passed his orders after a reconsideration of the matter, we have carefully gone through the findings/report furnished by the enquiry officer. We find that this report is a detailed report in which the matter with regard to the experience gained by the applicant from 19.12.1977 to 14.3.1978 and thereafter from 1.1.1983 to date has been carefully examined in all its details. We find that at the instance of the respondents, a detailed probe was held on 4.11.1997 in which Smt. Kusum Lata Goel SWLI/MB and the then DEN/T participated. After a careful scrutiny of the various material documents both of them reached the conclusion that the applicant had actually worked as a Casual Labourer from 19.12.1977 to 14.3.1978 and thereafter again from

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1.1.1983. We do not find any inconsistencies in the report prepared by the enquiry officer. On the other hand, we find that the enquiry officer has made every possible attempt to go to the bottom of things and make sure that the conclusions reached were based on sound and safe considerations.

6. As against the position outlined in the previous paragraph and notwithstanding the clear directions given by this Tribunal in OA No. 1291/1995, the appellate authority has passed an order which cannot be sustained. For example, we find that though the appellate authority has made a passing reference to the order of the Tribunal in the aforesaid OA, he has just not cared to go into the directions specifically given. He has also not cared to find out for himself that in respect of two matters at least namely age and possible overwritings in certain documents, the Tribunal had reached firm conclusions. In the aforesaid impugned order passed by the appellate authority on 3.2.2000, he has again gone into the question of applicant's age and has confirmed the guilt of the applicant on the charge of forgery without making any reference to the detailed findings recorded by the enquiry officer. He has based himself, we find, on pre-conceived notions, surmises and conjectures. He has thereby succeeded in reaching a totally wrong conclusion by not relying on the report of the enquiry officer.

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7. The order passed by the appellate authority dated 3.2.2000 is thus found to be bad and is quashed and set aside. For the same reasons, the order passed by the disciplinary authority dated 18.5.1994 is also quashed and set aside. The applicant will be reinstated from the date of his removal from service. In the peculiar circumstances of this case, the applicant will be entitled to payment of 50% of the wages otherwise due to him from the date of his removal from service upto the date on which reinstatement orders are passed. Respondents are directed to comply with the aforesaid directions in a maximum period of two months from the date of receipt of a copy of this order.

8. Again in the very peculiar circumstances of this case and having regard to the harassment meted out to the applicant, we impose on the respondents costs quantified at Rs.7,500/- (Seven Thousand Five Hundred).

9. The OA stands disposed of in the aforesated terms.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

/sns/