

Central Administrative Tribunal
Principal Bench

OA No.745/2000

New Delhi this the 2nd day of March, 2001.

(B)

Hon'ble Mr. V.K. Majotra, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judicial)

1. Vishan Swaroop son of Sh. Bigha Ram,
2. Laxmi Narain son of Sh. Mahendra Pal
3. Raksh Pal Singh son of Sh. Munshi Singh
4. Guru Dayal son of Shri Data Ram
5. Ram Khilladi son of Shri Gogi Ram

(All working as Casual Khallasi Temporary Status
at Loco Shed Dholpur Railway Station,
C/o Shri Ramesh, H-16/97,
Sangam Vihar, New Delhi.

...Applicants

(By Advocate Shri H.P. Chakravorty)

-Versus-

1. Union of India through the
Chairman, Railway Board,
Principal Secretary to
Govt. of India,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
2. The General Manager,
Central Railway,
Mumbai, CST.
3. The Divisional Railway Manager,
Central Railway, Jhansi.
4. The Asstt. Mechanical Engineer
(Freight), Central Railway,
DRM's Office, Jhansi.

...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

By Mr. Shanker Raju, Member (J):

In this OA the applicants have challenged the action of the respondents whereby despite cancellation of minor penalty charge-sheets issued to the applicants without stating reasons and showing intention to proceed with them further major penalty charge sheets have been issued to the applicants respectively in violation of RBE 171 of 93 dated 1.12.93 which mandates reasons to be

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recorded while issuing a fresh charge sheet while cancelling the original one and also showing intention of issuing a fresh charge sheet. The applicants, five in number, were engaged as casual labourer in the year 1984 to 1985 and thereafter when it was found that their casual labour cards were fake and forged the applicants were removed from service without holding any enquiry. Subsequently, on raising an industrial dispute the Presiding Officer of the Industrial Tribunal at Kanpur in ID No. 22/95 while observing that the workmen had been removed without any enquiry and against the principles of natural justice held the removal from service as bad in law and consequently the applicants had been put back in service. Vide SF.11 dated 16.9.99 the applicants had been issued a charge sheet for minor penalty for the alleged production of fake casual labour cards for getting employment with the respondents. The applicants filed their respected reply to the minor penalty charge sheet. Vide separate order dated 1.10.99 the minor penalty charge sheet under SF 11 dated 16.9.99 had been cancelled without stating any reasons and indicating any intention to issue a subsequent charge sheet on the same allegation. Later on, vide an order dated 1.10.99 under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (Railway Rules for short) had been issued to the applicants on the identical allegations of getting employment as Khallasis on the basis of forged and fake casual labour card. The applicants rely upon RBE 171/93 dated 1.12.93 to contend that it has been decided that if the order cancelling the proceedings is not a reasoned order and there is no intention to issue a fresh charge sheet, the Disciplinary Authority would be debarred from

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initiating fresh proceedings against the applicants. Applicants' counsel Shri H.P. Chakravorty, relies upon P. Dasaralhan v. Sub Divisional Inspector (Postal), Karikal & Others, 1990 (1) ATJ 164 CAT Madras as well as Munivellappa Vs. Senior Superintendent of Post Office, Bangalore East Division and another 1991 (15) ATC 917 to contend that in such circumstances the issuance of second charge sheet is not legally permissible. It is further contended that in the award made by the Presiding Officer, no liberty was given to the respondents to hold any enquiry. As such the respondents in absence of any such liberty cannot proceed against the applicants in an enquiry. It is further contended that under Rule-11 of the Railway Rules ibid the respondents have a right to hold enquiry in a minor penalty charge sheet. According to him, if the respondents despite the liberty not proceeded against them in an enquiry in pursuance of a minor penalty charge sheet then they are estopped from taking up a major penalty proceeding subsequently. The applicants further contended that in a similar award made by the Presiding Officer in case of number of casual labour despite liberty was given to the management to conduct a proper enquiry, but no enquiry had been held against some of the workers which amounts to an unreasonable and hostile discrimination to the applicants who are similarly situated. It is further contended that the matter is inordinately delayed as the charge pertained to submission of alleged fake casual labour cards for the purpose of seeking employment with the respondents in the year 1984-85 and the delay in initiation of the disciplinary proceeding against the applicants after 13 years without any reasonable

explanation of delay is belated and the action of the respondents is in violation of principles of natural justice.

2. The respondents' counsel Shri R.L. Dhawan refuted the contentions of the applicants and as a preliminary objection contended that the applicants have not come with clean hands as they had suppressed the fact of their being removed from service in the year 1987 and also the fact of award passed by the Industrial Tribunal on 2.12.97. It is contended that on the basis of an award dated 2.12.97 the charge was correctly issued to the applicants and the cancellation of a minor penalty chargesheet was fully justified as the applicants were aware of the reasons that a disciplinary proceeding is to be held against them for securing fraudulent employment on the basis of the fake casual labour cards. As regards the RBE, it is stated that the same would not be applicable in the case of the applicants. The respondents have further contended that the removal was set aside on technical grounds and further action is taken by the respondents to uphold a proper and reasonable opportunity to the applicant. According to them even if it is an administrative error the same would not give a right to the applicants. It is further contended that if the charges are serious the delay would not affect the enquiry. It is further contended that when fraud is detected in the appointments the same are to liable to be recalled. It is lastly contended that the applicants have not at all been prejudiced by the

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action of the respondents and the Tribunal has no jurisdiction to go into the correctness of charges in a judicial review.

3. The applicants reiterated their contention by filing a rejoinder.

4. Before dealing with the controversy in the present case the Tribunal while issuing notices in the present OA vide an order dated 1.5.2000 observed as under:

"A charge-sheet issued to applicants vide Annexure A-1 is impugned in the present O.A. on grounds, inter alia, that a similar charge earlier framed has been dropped without assigning reasons for the same. By placing reliance on a circular dated 1.12.1993 at Annexure A-6, it is inter alia contended that since the earlier enquiry had been dropped without assigning reasons for the same, a fresh enquiry on the very same charges is barred. As far as applicants are concerned, they are alleged to have obtained employment as casual khaliasies by producing false and fabricated casual labour service cards. Personnel Inspector, Jhansi has certified that he has not issued the aforesaid cards to applicants.

Question for consideration is whether it is a fit case to interfere having regard to the charges contained in the impugned charge-sheet, namely, obtaining employment on the basis of false and fabricated cards.

In the circumstances, we direct notices to be issued to the respondents. List before Joint Registrar on 4.7.2000 for completion of pleadings.

We make it clear that orders that may be passed in the disciplinary proceedings will be subject to further orders to be passed in the present OA."

5. In view of the observations made above, the controversy to be resolved in the present case is whether after cancellation of a minor penalty chargesheet without reasons and intention to issue a fresh, a major penalty

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chargesheet can be issued to a Railway servant specifically in view of RBE 171/93. It is further to be resolved as to whether the charges levelled against the applicants of obtaining employment on the basis of false and fabricated cards the Tribunal can interfere at the inter-locutory stage of issuance of chargesheet. The contention of the learned counsel of the applicants that in the year 1992 in a similar award passed by the Tribunal giving liberty to the respondents to hold a proper enquiry in the matter of casual labour card, the respondents had not taken any action against some of the persons therein viz. S/Shri Brij Kishore, Puran Singh, Subhash, Bijendra etc. and later on regularised as Group 'D' employees without holding enquiries. As such, in the instant case wherein the award of Industrial Tribunal dated 2.12.97 no liberty had been given to the respondents to hold an enquiry. The action of the respondents by issuing a major penalty chargesheet amounts to hostile discrimination violative of Articles 14 of the Constitution of India is not well founded. We have perused the award given by the Industrial Tribunal where the allegations of the workmen were that without holding enquiry the applicants were removed which was against the principles of natural justice. Even if the liberty is not provided to the respondents by the Tribunal the same is implicit and implied in the circumstances. The right of the respondents to enquire into the allegations against the applicants on obtaining the employment on the basis of fake and forged casual labour cards cannot be divested away as the allegations against the applicants are serious, and if proved, renders the employment as void ab initio. The applicants

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cannot claim parity with the casual labours party to ID of 1992 and their cases are to be decided independently in view of the award made on 2.12.97.

6. It has been next contended that the issuance of major penalty charge-sheet to the applicants is contrary to RBE 171/93 ibid and renders it illegal as on an identical charge the applicants had been issued a minor penalty chargesheet and on their respective reply the same was cancelled but the reasons for cancellation had not been incorporated in the order as well as no intention has been shown to issue a fresh chargesheet on the same allegations. The respondents contested this by taking resort to the fact that the same was mistakenly issued as the applicants were to be proceeded in a major penalty proceedings and further contended that even if it is an error on the part of the respondents the same would not give them a right contrary to law. To substantiate this the respondents' counsel relied upon the judgment of the Apex Court in State of Haryana v. Ram Kumar Mann, 1997 (2) SCSLJ 257 and A.K. Sarma & Anr. v. Union of India, JT 1999 (1) SC 113. Although the RBE dated 1.12.93 debars the disciplinary authority to initiate a fresh proceedings in the event the reasons for cancellation of the previous charge-sheet is not stated in the order and no intention to issue a fresh chargesheet subsequently is indicated. Keeping in view the seriousness of the charge where the applicants had been alleged to have obtained employment on the basis of false and fabricated cards and the fact that the minor penalty chargesheet had been issued and thereafter withdrawn without passing a final order and also the fact

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that in the major penalty chargesheet no proceedings have been taken yet, we are of the considered opinion that no prejudice has been caused to the applicants in cancellation of the minor penalty chargesheet and issuance of a major penalty chargesheet to them by the respondents. In fact in a minor penalty chargesheet the scope of enquiry is very limited and in a major penalty chargesheet the applicants shall have an ample and reasonable opportunity to defend the charges against them. In this view of ours we are fortified by the ratio laid down by the Apex Court in State of A.P. & Others v. N. Radhakishan, 1998 (4) SCC 154, where in the circumstances a charge memo issued in 1987 without being cancelled was replaced by another charge-memo in the year 1995. The Apex court observed that as no prejudice has been caused because of no significant progress in the previous enquiry, the initiation of fresh proceeding would only amount to an irregularity and not an illegality. Applying the ratio of the above judgement we find that in the instant case also no orders have been passed on the minor penalty charge-sheet and as the charges are serious and the applicants are to be afforded a reasonable opportunity in view of the fact that in their reference to the Industrial Tribunal it was a grievance that no enquiry was held before removing them from service, the present enquiry initiated with the issuance of major penalty charge-sheet rather is in the interest of principles of natural justice bestowing the applicants a reasonable opportunity to defend. As such, we find no infirmity in the order passed by the respondents' by cancelling the minor penalty chargesheet and issuing a major penalty proceedings. The respondents

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had also contended that the appointment obtained on fraud document even if detected after several years is to be recalled as voidable. The aforesaid contention is fortified by the ratio laid down by the Apex Court in Union of India v. M. Bhaskaran, 1996 (1) SCSLJ 1.

7. It is also contended by the respondents' counsel that the major penalty proceedings instituted against the applicants is inordinately delayed. According to the applicants the charge pertained to the year 1984 and the applicants were removed in the year 1987 and thereafter put back in pursuance of the award dated 2.12.97 as such the delay of about 13 years in instituting the proceedings is neither explained nor justified by the respondents. The aforesaid action is impugned on the basis that the same is in violation of principles of natural justice, depriving the applicants a reasonable opportunity to defend after such a longer period. We do not agree with the contention of the applicants as the applicants themselves raised an industrial dispute which was finally concluded in the year 1997 and thereafter the respondents took action against the applicants by issuing a minor penalty charge-sheet and thereafter the major penalty proceedings. As the charges are serious, we are of the considered opinion that there is no inordinate delay in the present case and even if there is a slight delay, the same would not affect the major penalty proceedings. In this view of ours we are fortified by the judgement of the Hon'ble Supreme Court in The Deputy Registrar, Cooperative Societies, Faizabad v. Sachindra Nath Pandey.

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& Others, JT 1995 (2) SC 407, where it has been held that if the charges are serious, delay would not affect the proceedings.

8. It has also been contended that the applicants while issuing the minor penalty chargesheet under Rule 11 of the Railway Rules, ibid, could have held the enquiry as prescribed under these rules but by not opting to the enquiry the issuance of major penalty chargesheet is not legally sustainable. We do not agree with the contention of the applicants, as there cannot be any estoppel against the statutory provisions. The respondents had thought it fit in the interest of the applicants to provide them reasonable opportunity by issuing a major penalty charge-sheet and this action of the respondents cannot be faulted.

9. In the result, we find that the issuance of major penalty chargesheets to the applicants is legal and valid. As such the OA is found devoid of merit and the same is dismissed. The interim order issued on 1.5.2000 and continued till now is vacated. The respondents are directed to continue with the major penalty proceedings against the applicants and expeditiously conclude the same, after giving reasonable opportunities to the applicants within a period of six months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Member (A)