

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 530/89
OA 683/89
OA 1351/89 ✓

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Date of decision: 11.5.1990.

1. OA 530/89

Shri Mukesh Kumar ...Applicant

Vs.

Union of India & Others ...Respondents

For the Applicant ...Shri B.S. Mainee,
Counsel

For the Respondents ...Shri Arvind Sinha,
Counsel

2. OA 683/89

Shri Satish Kumar ...Applicant

Vs.

Union of India & Others ...Respondents

For the Applicant ...Shri B.S. Mainee,
Counsel

For the Respondents ...Shri Inderjit Sharma,
Counsel.

3. OA 1351/89

Shri Mohinder Kumar Shanna ...Applicant

Vs.

Union of India & Others ...Respondents

For the Applicant ...Shri B.S. Mainee,
Counsel

For the Respondents ...Shri O.N. Moolri,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN (J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

(The Judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman(J))

In these applications filed under Section 19 of the

Administrative Tribunals Act, 1985, the applicants who had worked as substitute Khalasis were dismissed from service after holding an inquiry against them in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 for their alleged misconduct of having secured appointment by submitting bogus and forged casual labour cards. As common questions of law arise for consideration, it is proposed to dispose of these cases by a common judgment.

2. We may first briefly refer to the facts of these cases.

3. In OA 530/89, the applicant was appointed as a substitute Khalasi on 28.5.1988. In OA 683/89, the applicant was so appointed on 16.5.1984 while the applicant in OA 1351/89 was ^{so} appointed on 17.12.1984.

4. On 30th April, 1987, the respondents served on the applicants memoranda proposing to hold inquiry against them under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The memorandum was accompanied by the Articles of charge framed against each of ^α them, the statement of imputations of misconduct/misbehaviour, list of documents by which the Articles of charge were proposed to be sustained and the list of witnesses.

5. In the case of the applicant in OA 530/89, the Articles of charge were the following:-

ARTICLE I

That the said Shri Mukesh Kumar substitute Khalasi did not work as a C.L. Khalasi under IOW/SRE during the period 14.6.1978 to 13.9.1978 & 1.11.78 to 2.12.78 as per C.L. Card No.14859 submitted by him at the time of engagement in this workshop.

ARTICLE II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Mukesh Kumar submitted bogus and forged C.L. service card of the past service as no C.L. card has been issued in his favour.

ARTICLE III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Mukesh Kumar committed serious misconduct and his act is unbecoming of a Railway servant".

(vide page 15 of the paper book)

6. In the case of the applicant in OA 683/89, the Articles of charge were the following:-

" ARTICLE I

That the said Shri Satish Kumar Sub. Khalasi did not work as a C.L. Khalasi under PWI/N.Rly/Khurja during the period 15.6.77 to 5.7.78 as per C.L. Card No.256544 submitted by him at the time of engagement in this Unit.

ARTICLE II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Satish Kumar submitted bogus and forged C.L. Service Card of the past services as no C.L. Card has been issued in his favour.

ARTICLE III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Satish Kumar committed serious misconduct and his act is unbecoming of a Railway servant."

(vide page 16 of the paper book)

7. In the case of the applicant in OA 1351/89, the Articles of charge were the following:-

" ARTICLE I

That the said Shri Mahender Kumar Sub. Khalasi did not work as C.L. Khalasi while functioning as under PWI/HPU & IOW/SRE during the period 18.6.80 to 14.11.80 and 16.4.82 to 14.8.82 as per C.L. Card No.26062 submitted by him at the time of engagement in this workshop.

ARTICLE II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Mahender Kumar submitted bogus and forged C.L. Service Card of the past services as no C.L. Card has been issued in his favour.

ARTICLE III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Mehender Kumar committed serious misconduct and his act is unbecoming of a Railway servant".

(vide page 16 of the Paper Book)

8. In all the three cases, there was only one witness by whom the Articles of charge framed against the applicants were proposed to be sustained, namely, Shri Ghasi Ram, Office Clerk, Signal Workshop, Ghaziabad.

9. The applicants denied the allegations made against them and contended that they did not produce any forged casual labour card at the time of their appointments. After holding an inquiry, the Inquiry Officer submitted a report, according to which the Articles of charges have been proved.

Thereafter, the applicants were furnished the copy of the Inquiry Report and were given an opportunity to make a representation on the penalty proposed, which was dismissal from service. The applicants in their representations again pointed out that they did not produce any bogus casual labour card at the time of appointment. The applicant in OA 530/89 submitted that he had not worked under IOW, Saharanpur and that he did not produce the casual labour card alleged to have been issued by the IOW, Saharanpur. Similarly, the applicants in the other two applications (OA 683/89 and OA 1351/89) have also stated in their representations that they did not produce any casual labour cards at the time of their appointment.

10. The applicants have challenged the validity of the

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disciplinary proceedings initiated against them on the following grounds:-

(i) The documents relied upon were not given/shown to the applicant.

(ii) The Inquiry Committee adopted an entirely illegal procedure while holding the inquiry. According to rules and laws, the evidence of the findings as also the charged officer is to be recorded after the prosecution evidence has been completed. Instead of following the normal procedure, the Inquiry Committee examined the applicant first and thereafter the witnesses in support of the charges. This procedure has completely vitiated the proceedings.

(iii) There was no evidence to substantiate the charge that the casual labour card in respect of each of the applicants was produced by the applicant at the time of his appointment. No evidence was produced by the prosecution in this regard.

(iv) The officer who had appointed the applicant and before whom he is alleged to have produced the bogus casual labour card was not produced during the inquiry.

(v) There was no evidence to sustain the charges. The findings of the Inquiry Officer are based on ^asurmises and conjectures and are, therefore, perverse.

11. The plea of the applicant in OA 530/89 is that ^{at}the

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time of appointment he had submitted that he had worked as casual labourer in the P&T Department and he had also submitted a copy of the certificate in regard to his previous service. The plea of the applicant in OA 683/89 is that he had applied for the post of a Driver and along with his application he had annexed a copy of his driving licence. The plea of the applicant in OA 1351/89 is that at the time of appointment, he was asked whether he had worked on the Railways earlier to which he had replied that he had worked under PWL, Hapur, from 18.6.1980 for 150 days and again from April, 1982 for 120 days under the IOW, Saharanpur. He had also worked for 45 days as casual labourer in 1984 in the Ghaziabad Workshop.

12. We have carefully gone through the records of these cases and have heard the learned counsel of both parties.

The only admission on the part of the applicants is that they had produced photographs and given signatures at the time of their appointment for the purpose of character verification. They have contended that the photographs and signatures have been affixed on the alleged bogus casual labour card by some interested persons.

13. In our opinion, the impugned orders of dismissal passed by the respondents are not legally sustainable, as explained below.

14. The respondents have proceeded in the matter purely on the basis of surmises and conjectures. As has been observed by the Supreme Court in Union of India Vs. H.C.

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Goel, AIR 1964 SC 364 at 370, "mere suspicion should not be allowed to take the place of proof even in domestic inquiries". There is no evidence to the effect that the applicants produced the bogus casual labour cards on which their photographs and signatures appeared. The officer who had verified the particulars of the applicants at the time of their appointment, is a crucial witness in the proceedings. He has not been examined in these proceedings.

15. In Mangal Singh Vs. The Commissioner of Himachal Pradesh Government, 1975(1) SLR 500 at 502, the Deputy Superintendent of Police was an important witness in the inquiry held against the petitioner in a disciplinary proceeding initiated against him. R.S. Pathak, C.J., as he then was, observed that when the Deputy Superintendent of Police was not produced in evidence and was not available for cross-examination by the petitioner, it is apparent that the report submitted by him cannot be relied on as material against the petitioner. It was further observed that it was wrong in holding that the charges against the petitioner stood proved notwithstanding the absence of the Deputy Superintendent of Police as a witness. In view of this, it was held that the very basis on which the show cause notice against removal was issued, stood vitiated.

16. In U.P. Warehousing Corporation Vs. V.N. Vajpayee,

1980(3) SCC 459 at 466, the Supreme Court observed as follows:-

" The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show-cause notice for the proposed punishment. Such an opportunity was denied to the respondents in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party 1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the opposite party 1 that he relied upon the reports of some persons and the statement of some other persons who were not examined by him."

17. Another lacuna in the proceedings is that the Enquiry Committee examined the applicant first and then only called the prosecution witnesses. In our opinion, an inquiry in which the delinquent officer is examined at the very commencement of it, cannot be held to be a fair inquiry giving him a reasonable opportunity of defending himself.

In Associated Cement Company Vs. Their Workmen, 1963(2) Lab. LJ 396, the Supreme Court observed as follows:-

" The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings".
(See also Ramshakal Vs. R.P.F. Bombay, AIR 1967 M.P. 91; & Pushupati Vs. Deputy Chief Engineer, AIR 1960 Assam 51).

18. In the instant case, the proceedings of the enquiry clearly indicate that it was in the form of questions and answers between the Inquiry Officer and the delinquent officer from the very outset of the enquiry.

19. In the conspectus of the facts and circumstances of the cases, we are of the opinion that the impugned orders of dismissal are liable to be set aside and quashed.

Accordingly, we order and direct as follows:-

- (a) The impugned orders of dismissal dated 17.8.1988 are set aside and quashed.
- (b) The respondents are directed to reinstate the applicants as substitute Khalasis.
- (c) The applicants would be entitled to the pay and allowances from 17.8.1988 to the date of their reinstatement.
- (d) The applicants shall be considered for regularisation in accordance with the relevant rules.
- (e) The respondents are directed to comply with the above directions within ^a period of three months from the date of communication of this order.
- (f) The parties will bear their own costs.

Let a copy of this order be placed in all the three case files.

(D.K. CHAKRAVORTY)
MEMBER (A)

4/5/90

11/5/90
(P.K. KARTHA)
VICE CHAIRMAN (J)