

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No., 1737/89

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T.A. No.

DATE OF DECISION 17.8.1990.Shri Subhash Chand~~Petitioner~~ ApplicantShri G.D. BhandariAdvocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through the

Respondent

Gen. Manager, Northern Rly. & Urs.Shri Inderjit Sharma

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

The applicant, who has worked as a substitute Khalasi in the Northern Railway, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order dated 17.8.1988, whereby he was dismissed from service as also the rejection of his appeal by the impugned order dated 15.7.1989. He has prayed that the respondents be directed to reinstate him in service with all consequential benefits, including back wages.

2. The facts of the case in brief are that the applicant was appointed as a substitute Khalasi in the Machine Shop in the Northern Railway, Signal Workshop, Ghaziabad. A show-cause notice was issued to him on 31.3.1987 alleging

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that he had produced ^a ~~bogus~~ and forged Casual Labour Service Card ^{in respect a} of the past casual labour service rendered by him and thus secured appointment on wrong declaration. Thereafter, on 31.3.1987, a charge-sheet was issued to him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 alleging that he had procured a bogus and forged Casual Labour Card at the time of his appointment.

3. After holding an enquiry, the respondents proposed to impose on him the penalty of dismissal from service. The applicant submitted a representation in which he alleged that the enquiry was conducted in violation of the principles of natural justice, and that the Enquiry Officer straightaway proceeded to examine the applicant by adopting the system of question and answer.

4. The disciplinary authority thereafter passed the impugned order dated 17.8.1988 imposing on him the penalty of dismissal from service. The appeal filed by him against the aforesaid order was also rejected by the appellate authority by the impugned order dated 15.7.1989.

5. The applicant has contended that he did not produce any Casual Labour Card at the time of initial appointment, that he had actually worked under IOU, Aligarh and had submitted an experience certificate in proof thereof at the time of his appointment, that no opportunity was given to him to defend himself by engaging a Defence Assistant, that he was denied important documents required for his defence, that the

Enquiry Officer straightaway proceeded to examine him by putting questions, that he was not supplied with a copy of the report submitted by the Enquiry Officer before imposition of the penalty, and that the Appellate Authority had passed a non-speaking order.

6. The respondents have stated in their counter-affidavit that the applicant was given reasonable opportunity to defend himself, and that the enquiry was held strictly in accordance with the rules. As regards the putting of the questions to the applicant, they have stated that there was no illegality in the procedure, especially when the charges against him were to be proved on the basis of the documents. They have contended that the Appellate Authority had passed a well-reasoned and speaking order.

7. We have gone through the records of the case carefully and have considered the rival contentions. The respondents were also good enough to make available to us the relevant papers dealing with the disciplinary enquiry conducted against the applicant. On going through the file relating to the enquiry, it is noticed that the respondents had enclosed a copy of the report of the Enquiry Officer with the memorandum dated 4.6.1988 addressed to the applicant whereby he was given an opportunity for making representation on the proposed penalty. The Enquiry Report also indicates that despite adequate opportunities given to the applicant to nominate his defence Counsel, he did not do so. The proceedings of the enquiry, however,

indicate that it was in the form of questions and answers between the Enquiry Officer and the applicant to begin with, and the only prosecution witness who had been cited was examined thereafter. This was clearly a violation of the principles of natural justice. An enquiry in which the delinquent officer is examined at the very outset, cannot be held to be a fair one ~~without~~ 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 MP 91; & Pushupati Vs. Deputy Chief Engineer, AIR 1960 Assam 51).

8. The applicant had raised several points in the appeal submitted by him to the Appellate Authority on 27.9.1988. The appellate order does not, however, indicate that these points had been considered by him. The appellate

order dated 15.7.1989 reads as follows:-

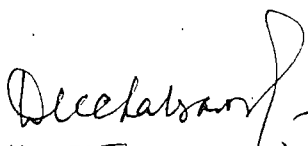
"I have gone through carefully the entire D&AR proceedings and also the appeal submitted by Sh. Subhash Chander. The delinquent was given full opportunity to different scale also. I do find that Sh. Subhash Chander has submitted bogus and forged Casual Labour Service Card to seek appointment as temporary Khalasi in Signal Workshop, Ghaziabad.

I, therefore, uphold the decision of the disciplinary authority for dismissing him from the Railway Service".

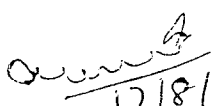
9. It will be noticed that the appellate order is a non-speaking order. The Supreme Court has held that it is incumbent on the Appellate Authority to pass speaking orders on the appeals submitted by the delinquent in such cases. (Shri R.P. Bhatt Vs. Union of India, 1986 (2) SCC 651; and Ram Chander Vs. Union of India, 1986 (3) SCC 103 at 107-108).

10. In the conspectus of the facts and circumstances of the case, we are of the opinion that the impugned orders dated 17.8.1988 and 15.7.1989 are not legally sustainable. We, therefore, set aside and quash the same. The respondents are directed to reinstate the applicant in service within a period of three months from the date of communication of this order. He will also be entitled to all consequential benefits, including back wages.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member

17/8/89


(P.K. Kartha)
Vice-Chairman(Judl.)