

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 2747/87

Date of decision: 5-3-1992

Shri Ram Avtar ... Applicant

versus

Union of India & Ors. ... Respondents

CORAM: The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)
The Hon'ble Mr. D.K. Chakravorty, Member (A)

For the Applicant ... Shri V.P. Sharma, Counsel

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

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. D.K. CHAKRAVORTY, MEMBER)

The applicant who was last employed as Pointsman 'B', Northern Railway at Suratpura, has assailed the order dated 7.1.86 removing him from service. He has prayed for setting aside the impugned order and declaring that he be deemed to be in service of the respondent department without any break.

2. While working in the post of Pointsman 'B' at Suratpura Railway Station, the applicant was chargesheeted under order dated 30.6.84 for adopting illegal and fictitious measures to secure the post of Hot Weather Waterman at Rewari (Annexure A/2). He was removed from service by the Assistant Operating Superintendent vide Office Order dated 7.1.86 (Annexure A/1). OA No. 87/86 filed earlier by the applicant was dismissed by the Tribunal on the ground that it was pre-mature. (Annexure A/3). The applicant has stated that the respondents' pleading before the Tribunal on 3.4.86 was false as he had submitted his representation dated 15.2.86 (Annexure A/4) through Registered Post dated 21.2.86 (Annexure A/5) which has been received

by the respondents vide Postal receipt, photocopy of which has been annexed at Annexures A/5 & A/6. His representation dated 15.2.86 was not replied to. However, his appeal dated 4.4.86 was rejected under Respondents' letter dated 8.8.86(Annexure A/8).

3. In the chargesheet it is alleged that on verification of his working period from the paid vouchers of Rewari Station it was found that he had never worked as Hot Weather Waterman at Rewari during the period from 11.6.78 to 26.9.78. His action for obtaining employment on false labour card tantamounts to serious misconduct and he was, therefore, responsible for violating rule No.3(1)(i)&(ii) of the Railway Services Conduct Rules,1966. The applicant has contended that any alleged conduct prior to the date of appointment will not come within the ambit of Rule 3 of the Railway Services(Conduct) Rules,1966 as held by the Allahabad High Court in Abdul Aziz Khan Versus Union of India. He has challenged the enquiry proceedings and the enquiry report being illegal,unjust,biased, not according to the law and violative of the principles of natural justice on the ground that Shri Sita Ram, who conducted the preliminary enquiry and was ^{the} only prosution witness ^{and} he did not appear in the cross-examination; the enquiry officer had collected material from outside source behind his back; the enquiry officer adduced his own evidence and offered himself as a witness for the department against the applicant; the enquiry officer's record on the report of the preliminary enquiry cannot be taken as substantive evidence; and neither the labour card in original nor any other documents were exhibited. Further, the order of the appellate authority is bad in the eyes of law because his representation was rejected

8
by the appellate authority who passed the order in printed form without giving his opinion on the facts and did not put his consideration on the evidence.

4. The applicant has relied upon numerous authorities* in support of his claim which we have duly considered.

5. The application has been contested by the respondents. In the counter they have taken a preliminary objection that since the applicant was last working at Suratpura Railway Station, Bikaner Division, the Principal Bench of the Tribunal has no territorial jurisdiction to try this application. We reject this contention outright since an employee not in service is entitled to agitate his claim before a Bench of his choice and, in any case, the Hon'ble Chairman has accorded his approval to allow the retention of this case before the Principal Bench on 6.3.1987. It has been contended that the applicant was screened on the basis of his working at Rewari which has proved to be false. Shri Sita Ram was intimated as many as 10 times to attend the enquiry but he did not do so and when he attended, the defence helper of the applicant was not present. However, it had been proved from the paid vouchers that no salary was paid to the applicant for the alleged working during 1978 and 1979 and the card produced by him was fake, fraudulent and bogus. The applicant has not exercised his right to file an appeal earlier to the appellate authority and had rushed to the court prematurely which was rejected by the Tribunal vide its judgement dated 3.4.86. It is contended that the applicant was given every opportunity under the Discipline and Appeal

✓ * AIR 1973 SC 2275; AIR 1972 SC 2083; AIR 1964 SC 1854; AIR 1966 SC 282; AIR 1970 SC 1255; AIR 1963 SC 375; 1970 SLR 375; AIR 1957(ORI) 184; AIR 1958 SC 86; AIR 1958 SC 204; AIR 1958(AP) 240; 1977(2)SLR 186 and 1978(2) SLR 68.

Rules; the inquiry was conducted in which all records upon which the finding was based was recorded in the presence of the defence counsel of the applicant; in the preliminary enquiry conducted by Sh.Sita Ram the explanation in the form of question-answer was recorded and the applicant had himself signed the same. Since the applicant claims that he is not covered by Rule 3 of the service conduct rules, he cannot claim any protection of these rules and all his other objections fall flat. The applicant is approbating and reprobating at the same time and is apparently indecisive as to the defence taken by him. He cannot reject the rules and at the same time seek protection thereunder. In view of the above, the respondents have sought that the application be dismissed.

6. We have heard the learned counsel and considered the rival contentions. We have also carefully gone through the records of the case.

7. The learned counsel for the applicant relies heavily on the judgement of the Allahabad High Court in the case of **Abdul Aziz Khan Vs.U.O.I (1974(1) SLR 67)** in which it has been held that to bring a railway servant under the provisions of Rule 3(1)(i)&(ii) of the Railway Servants (Conduct) Rules, 1966, he must have been in the service of the Railway department at the time of committing the alleged misconduct. However, the learned counsel has also argued at length on the various infirmities in the enquiry proceedings against the applicant. The learned counsel for the respondents strenuously asserted that the applicant cannot simultaneously claim protection of Abdul Aziz's case as also the provisions of Railway Servants (Discipline & Appeal) Rules. We are inclined to agree with the views of the learned

counsel for the respondents. As the applicant participated in the departmental enquiry, we may examine the various contentions raised by him about the enquiry proceedings and his other submissions.

8. It has been noted that the dismissal of OA 87/86 was based on a submission made by the respondents which was not factually correct. The applicant had indeed, submitted his representation prior to the filing of that OA but that was not replied to. His subsequent representation was, however, rejected by a non-speaking order. He was also not given any personal hearing. In the enquiry the main witness was Shri Sita Ram Tripathy, who had conducted the preliminary enquiry prior to the formal disciplinary enquiry. A perusal of the DAR enquiry proceedings (Annexure A-11) dated 21.7.85/ indicates that despite Enquiry Officer's repeated messages Shri Sita Ram Tripathy did not attend the enquiry proceedings. The relevant extracts from the enquiry report are reproduced below:

"...In annexure III of the aforesaid case ENQ Proceedings were held on 16.8.84, 6/x, 26/11, 12/12, 15/1/85, 20/2 & 10/3 but due to Non attendance of Prosecution Witness Sri Sita Ram Tripathi WLI Dee despite my repeated message, the Enquiry Proceeding could not be finalised and no cross examination from other side could be done. He only once attended on 12/12 & on that particular occasion unluckily defence counsel did not turn up & No proceedings could be carried out.

As such there had been no alternative left with me except to take ex Parte decision based on the documentary evidence available on file, preliminary report of WLI & attendance Registers of SSRI for Pel/Enquiry 11/6/78 to 20/9/78 & 12/5/79 to 27/9/79 and taking in so consideration of defence of the

delinquent employee as there was no hope of appearance of Prosecution witness & defence

was pressing hard to finalise the ENQ.

-x- x- -x-

...However, the plea put forward by the defence in his para 3,4,4.1 may be considered if deemed justified under the extant rules.

Findings

- (i) While summing up my findings I conclude that Shri Ramavtar S/o Baboo Lall PMan SURP is held responsible for producing a bogus labour card No.207030 having fictitious & false entries as having worked under SSSRF from 11.6.78 to 26.9.78 & 12.5.79 to 27.9.79 & thereby manipulated in securing employment in Rly.
- (ii) Keeping in view the para 3,4 & 4.1 of defence statement the feasibility & application of the quotation of rules therein be considered on the merit of the case as per copies of circulars enclosed by the defence."

The above extract explains why the enquiry proceedings could not be finalised and the cross examination from the other side could not be done. In utter frustration, the Enquiry Officer had to close the enquiry, take ex parte decision and give his report. He was not able to deal with some of the pleas taken by the applicant in his defence statement dated 4.5.1985(Annexure A-10) and left these points for consideration on merit by the Disciplinary Authority. The Assistant Operating Superintendent(M) did not apply his mind to these points and passed the bald order ^{imposing} / penalty of removal from service. The Appellate Authority rejected the appeal by a non-speaking order.

9. The Enquiry Report fully establishes the applicant's contention that he had not been given adequate opportunity of defending himself in the departmental enquiry and

there was denial of natural justice.

10. In the light of the above discussion, we hold that the enquiry proceedings suffer from serious infirmities, and the punishment order passed in pursuance thereof and the appellate order are not legally sustainable. We, accordingly, quash and set aside the impugned order dated 7.1.86 imposing the penalty of removal from service. The applicant shall be reinstated in service within a period of three months from the date of receipt of this order. In the circumstances of the case, however, we do not direct payment of back wages. After reinstating the applicant, the respondents shall be at liberty to proceed against the applicant for any alleged misconduct in accordance with the rules, if so advised.

There will be no order as to costs.

D.K.Chakravorty 5/3/86
(D.K.CHAKRAVORTY)
MEMBER(A)

Ram Pal Singh 5/3/86
(RAM PAL SINGH)
VICE-CHAIRMAN(J)