

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

DA.1379/90

Date of decision: 9.7.93

Shri Rishi Pal

Applicant

Versus

Union of India and others

Respondents

Shri B.S. Mainee

Counsel for the applicant

Shri Shyam Moorjani

Counsel for the respondents

CORAM: The Hon. Mr. I.K. RASGOTRA, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

J U D G E M E N T (Oral)

(delivered by Hon.Member(A) Shri I.K.RASGOTRA)

We have heard the learned counsel for both parties.

The controversy starts when the petitioner was appointed as Substitute Khalasi, Northern Railway Workshop at Ghaziabad(U.P.) on 16.5.1984. He had submitted a casual labour card No.82968/ particular of the services rendered by him prior to 1.8.78, the crucial date for reengagement of casual labourer in accordance with the Railway Board's circular dated 24.9.87. After the petitioner joined as Substitute, he was given a charge sheet on 30.4.87. The charge against him is that Shri Rishipal, Substitute Khalasi had been working as Casual Labour Khalasi under Signal Inspector Pathankot during the period 17.12.77 to 15.4.78 as per the casual labour card No.82968 submitted by him at the time of appointment in this workshop. The casual labour service rendered as above has been found to be a bogus entry. He has thus committed a serious misconduct. An enquiry was held in which only the petitioner was examined. No other evidence was recorded. The only document cited in the charge sheet is a letter of Signal Inspector Pathankot purporting to say that the petitioner had not worked under him during the period 17.12.77 to 15.4.78. The enquiry report was submitted by the Board of Enquiry on 23.5.88 holding the petitioner guilty. The disciplinary authority passed an order dated 16.8.88 dismissing the petitioner from service. The petitioner filed an appeal which

was also dismissed on 28.6.89. The case of the petitioner is that he had never denied that he worked during the period 17.12.77 to 15.4.78 under SI Pathankot. He had, however, worked under the SI, Ghaziabad from 22.10.77 to 14.12.77 and he had thus no motivation to submit a forged casual labour card. The fact that he had worked under the Signal Inspector for the period from 22.10.77 to 14.12.77 is not disputed. The controversy is about the period 17.12.77 to 15.4.78. The petitioner admits that he had not worked under this period under Signal Inspector Pathankot. He also admits that he had submitted a casual labour card No.82968 at the time of engagement. The respondents case is that since the petitioner had submitted the casual labour card No.82968 which contained the entry of service from 17.12.77 to 15.4.78, it was for him to prove how this entry was made. In the enquiry proceedings, the petitioner had submitted that the casual labour card was lost and he had filed an FIR to that effect. This entry according to him might have been made either when the card was lost or when the card was in the possession of the respondents. The only evidence relied upon by the respondents is that the petitioner had himself submitted the record which contained alleged entry of service from 17.12.77 to 15.4.78. They have not produced any other evidence to prove that the petitioner was responsible for making a forged entry. The learned counsel for the petitioner brought to our notice the judgement in the case of Mukesh Kumar Versus Union of India and others reported in 1990 (2) ATJ page-1. The Tribunal in that case, observed that in the enquiry proceedings only the delinquent officer was examined. From the very commencement of it and the enquiry cannot be held to be a fair one, in as much that a reasonable opportunity for putting up his defence was denied to the petitioner. The Tribunal relied on the case of Associated Cement Company versus Their Workmen (1963(2) Lab LJ 396 wherein, their Lordships observed:

"The other infirmity in the present proceedings flows from the fact that the enquiry was commenced with a close

examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as question in cross examination. It is necessary to emphasise 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 matter, 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."

Reliance had also been placed in the case of Union of India versus S.C. Goel (AIR 1964 SC 364).

Having regard to the above, the Tribunal quashed the impugned order of dismissal in the Mukesh Kumar (supra) case.

2. We have considered the submissions made by the learned counsel for both parties and perused the document on record. We are of the opinion that the enquiry officer has violated the principles of natural justice by not following the elementary principals of evidence by giving the findings which are nothing but perverse as they are based on no evidence. In the circumstances, the whole enquiry is vitiated.

3. The contention raised by the learned counsel for the respondents that the burden of proof lies on the applicant as he admitted his guilt is totally untenable because the applicant neither admitted that he forged the documents nor that he had worked under SI Pathankot for the period from 17.12.77 to 15.4.78. There is no evidence to controvert the contention of the petitioner. We are not the appellate court to reappraise the evidence. We see that there is no evidence at all in this case. Besides, we have also seen the appellate order which is nothing but a carbon copy without application of mind, not a speaking order with giving any reasons with the objection satisfactorily. Therefore, in that point also we hold that the appellate orders are also bad in law.

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4. In the conspectus of the above facts and circumstances of the case, we set aside and quash the order of the appellate authority dated 16.8.88 and the rejection of the appeal of the petitioner dated 28.6.89 dismissing him from Railway service. The respondents are directed to reinstate the petitioner in the post in which he was appointed. He will also be entitled to consequential benefits subject to his certifying that he was not guilty during the period. The above order shall be implemented within a period of three months from the date of communication of this order. No order as to costs.

W. S. Roy
(C.J. ROY)
MEMBER (J)
9.7.93

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)
9.7.93

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Note: - Amended vide order dt. 17.11.93
in M.A. 3432/92.