

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(23)

D.A. No. 486/1990. Date of decision: 10.8.93

Shri Lal Singh Petitioner.

Vs.

1. The General Manager,
Northern Railway,
Boaroda House, New Delhi. Respondents.
2. The Divisional Railway Manager
Northern Railway,
State Entry Road,
New Delhi.

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A).

For the petitioner ... Ms. Shyamla Pappu, Sr. Counsel
with Shri B.S. Mainee, counsel.

For the respondents ... Shri O.P. Kshtriya, counsel.

JUDGEMENT

(By Justice V.S. Malimath, Chairman)

This case has come before the Full Bench on the reference made by the Division Bench consisting of Shri S.P. Mukerji and Shri J.P. Sharma. The petitioner, Shri Lal Singh has stated in his Application that he was working as a Casual Labour, P.W. Khallasi under the Permanent Way Inspector, Khurza from 2.3.1973 to 14.6.1973 and from 5.7.1973 to 14.10.1973. Thereafter he worked as Casual Labour under the P.W.I. Nizamuddin Railway Station from

1.6.1981 till 20.12.1982. Again he worked from 21.12.1982 to November, 1986. When an occasion arose to fill up the post of Shunting Porter on a regular basis, his case was duly considered. The previous record of his service was taken into consideration and he was duly selected and appointed as Shunting Porter, and was posted under the Station Superintendent, Nizamuddin with effect from 21.11.1986. A disciplinary enquiry was initiated against him on the charge that he secured regular appointment as Shunting Porter by producing a false and fabricated casual labour service card showing that he had worked as a casual labour from 2.3.1973 to 14.6.1973 and from 5.7.1973 to 14.10.1973.

2. The petitioner having denied the charge levelled against him, a regular enquiry was held by appointing an Enquiry Officer for that purpose. The Enquiry Officer submitted his report holding the charge duly proved. Accepting the said report, the Disciplinary Authority passed an order (Annexure A-I) dated 7.7.1989 dismissing him from service. The petitioner challenged the said order in appeal before the Deputy Operating Superintendent who by his order dated 18.8.1989 (Annexure A-2) dismissed the appeal. The petitioner has challenged in this Application the order of the Disciplinary Authority and that of the Appellate Authority affirming the same.

3. When the case was argued before the referring Bench, one of the principal contentions urged on behalf of the petitioner was that the conduct of the petitioner before this regular appointment on 21.11.1986 could

not be made the basis for holding a disciplinary enquiry against him. The stand taken was that it is only the conduct of the petitioner after his appointment, that could be made the subject matter of disciplinary proceedings and not his conduct anterior to his appointment. The stand taken by the respondents before the referring Bench was that the petitioner having secured appointed by producing fabricated casual labour service card, the authorities ~~were~~ competent to conduct a disciplinary enquiry in this behalf and to award appropriate punishment. On this question, ^{as} the two Members were holding different views, they felt it necessary to refer the entire case to the Full Bench. But when the case was argued before us, Smt. Shyamala Pappu, learned counsel appearing for the petitioner submitted that as she has other good grounds to challenge the impugned orders, she would not like to advance arguments on the aforesaid question. In the stand taken by the learned counsel for the petitioner, we are not called upon to examine the issue which was highlighted by the Members of the referring Bench. We shall, therefore, confine our attention only to the contentions that were pressed into service in support of the petitioner's case before us by Smt. Shyamala Pappu.

4. It was contended by Smt. Shyamala Pappu, learned counsel for the petitioner that the impugned orders are liable to be quashed on the ground that the petitioner was denied reasonable opportunity of being heard in this case.

As already stated, the charge which the petitioner was required to meet is that the casual labour service card produced by him is a false and bogus document. The card certifies that the petitioner worked as casual labour from 2.3.1973 to 14.6.1973 and from 5.7.1973 to 14.10.1973. The allegation against the petitioner is that he did not in fact work during the said period and that, therefore, the casual labour service card is a bogus and concocted document. It is not the allegation nor is there any charge to the effect that the signature on the casual labour service card is a forged one. The petitioner tried to meet the charge levelled against him by taking the stand that the casual labour service card produced by him represents the true facts as he had actually worked as a casual labour during the periods mentioned in the said card. So it was for the petitioner who tried to establish that he in fact worked as a casual labour during the periods specified in the card. For establishing this part of the case pleaded by him, he made an application to the Enquiry Officer to get the muster roll of the concerned office for the relevant period produced. The Enquiry Officer passed an order as per Annexure A-5 dated 7.6.1988 accepting the request of the petitioner. He directed a letter being sent to the concerned authority to produce the muster roll and adjourned the case for that purpose to 21.6.1988. But the Officer to whom the requisition was sent, replied to the Enquiry Officer stating that he cannot produce the relevant records they being not in his custody.

He pointed out that they can be had from another office, particulars of which he furnished. The Enquiry Officer instead of summoning the muster roll from the officer who had the custody of the same, proceeded to hold the enquiry. He has held that as the wage register has been produced, which does not contain the name of the petitioner, there was no need to look into the muster roll. He appears to have proceeded on the basis that if the petitioner's name is not in the wage register, his name cannot be there in the muster roll. It was urged by Smt. Shyamala Pappu, learned counsel for the petitioner that muster roll is the document where names of casual labours that actually worked on each day are entered and that is the primary evidence about the casual labourer having worked. It was submitted that the entries in the muster rolls are made first and the entries in the wage register are made later. She, therefore, urged that if the name of the petitioner is found in the muster roll as having worked as a casual labour during the relevant periods, it would establish that the casual labour service card produced by him does not contain false information. It is not the case of the respondents that the muster roll is not available. The Enquiry Officer himself accepted the request of the petitioner and directed production of the same. Merely because the request was addressed to the person who was not in custody of the same, even though the name of the officer in whose custody the said muster rolls

were available was furnished, there was no justification for not calling for production of the same by addressing a letter to the appropriate authority. The petitioner, in our opinion, is right in maintaining that muster roll is a very valuable piece of evidence for establishing the petitioner's case that he worked as a casual labour during the relevant periods. The petitioner could not have himself produced the same as they were in the custody of the concerned authorities. The Enquiry Officer, therefore, was not justified in not getting the muster rolls produced as there was no real difficulty or hurdle in getting them produced. We have, therefore, no hesitation in holding that the petitioner was denied the opportunity by not securing the relevant muster roll produced which was a valuable piece of evidence to prove his case that he actually worked as casual labour during the relevant period. Hence, we hold that the petitioner was denied reasonable opportunity of defending himself. It is on this short ground that the order of the disciplinary authority and that of the appellate authority affirming the same are liable to be quashed.

4. The next question for consideration is as to whether we should remit the case for further enquiry with a direction to get the muster rolls produced and to give a further opportunity to the petitioner for defending himself. At this stage, Smt. Shyamala Pappu, learned counsel for the petitioner submitted that the petitioner was a very low

paid employee and has suffered a lot, being out of employment for more than four years. She submitted that further enquiry and further litigation may, having regard to the circumstances of the case be avoided. She, on the instructions of the petitioner, submitted that he undertakes to give up his claim for back wages. Having regard to the special facts and circumstances, and in the light of the undertaking given by the petitioner to give up back wages, we consider it just and proper not to reserve liberty for continuing the disciplinary proceedings.

5. For the reasons stated above, this application is disposed of with the following directions:-

- (i) The impugned order of the disciplinary authority dated 7.7.1989 (Annexure A-1) and that of the appellate authority dated 18.8.1989 (Annexure A-2) are hereby quashed.
- (ii) The respondents are directed to reinstate the petitioner in service within a period of three months from the date of the receipt of the judgment.
- (iii) The petitioner shall not be entitled to any back wages till the date of his reinstatement.
- (iv) The petitioner shall not be entitled to question the promotions made before his reinstatement in service.
- ✓ (v) The pay of the petitioner on reinstatement

shall be fixed as if he had continued in service without interruption by the order of dismissal.

(vi) There will be no order as to costs.

R. N. DHOONIYAL
(B.N.DHOONIYAL)
MEMBER(A)

(S.K.) DHAON
VICE-CHAIRMAN

(V.S. MALIMATH)
CHAIRMAN

skS