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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No.1285/91

Date of decision: 27.08.1993.

Shri Mohinder Parsad Sharma

...Petitioner

Versus

Union of India through the  
General Manager, Northern  
Railway, New Delhi & Anr.

...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)  
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri B.S. Mainee, Counsel.

For the respondents

Shri O.P. Kshatriya, Counsel.

Judgement(Oral)  
(Hon'ble Mr. I.K. Rasgotra)

We have heard Shri B.S. Mainee and Shri O.P. Kshatriya, learned counsel for the petitioner and the respondents. The petitioner was appointed as substitute loco cleaner (Rs.750-940) in the office of the respondents vide order dated 6.8.1988. The said appointment letter indicates his date of birth as 14.1.1958 and the date of initial engagement in the Railways as 5.10.1977. A major penalty charge-sheet was issued to the petitioner under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on 11.10.1989. The following is the article of charge contained in the statement of article of charge framed against him:-

"That the said Shri Mahindra Prasad Sharma got engagement as Sub. Cleaner by producing casual labour cadre issued by IOW/BLM. From the casual labour card as produced by him it was revealed that he has worked from 5/10/77 to 31/5/81 under IOW/BLM. But during the course of inquiry conducted

by Sri V.K. Saxena SWLI/MB it was revealed that Shir Mahindra Prasad Sharma has never worked under IOW/BLM during the aforesaid period as reported by IOW/BLM. He is responsible for submitting forged casual labour card and got engagement by the fraudulent means. He has thereby violated rule No.3 item No.(i), (ii) (iii) of the railway servants conduct rule 1966."

In the statement of imputation of misconduct in support of the article of charge it is stated that:-

"It has been reported by the IOW/BLM. vide his note dt. 10/8/89 that said Sh.Mahindra Prasad Sharma never worked under him thus he is responsible for submitting forged casual labour card and got engagement by the fraudulent means."

The learned counsel for the petitioner submitted that the enquiry has not been held in accordance with the rules. Neither the evidence of the witness indicated in the list of witness nor the documents listed in the list of documents have been produced. In this connection he referred us to the report of the enquiry officer. The conclusions in the enquiry are based on the personal efforts of the enquiry officer. He visited the office of the AEN, Hardoi and checked the live casual labour register and found that the name of the petitioner was not there in the said register. He also checked that the stamp on the casual labour register was in English whereas the stamp used in the office of IOW/BLM was in Hindi. The enquiry officer has also noted that the charged officer was not cooperating with the enquiry and on four occasions he absented himself from the enquiry. The enquiry officer concluded the enquiry in the

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following words:-

"His name not found in live register kept in AEN/HRI office.

Stamp of IOW/BLM did not tally on C/L card & other record of that time.

IOW/BLM at that time refused that the signature on C/L card is not mine (Mr. Julta, now wkg at MB as IOW State) & IOW Mr. Kureshi is not alive.

Present IOW/BLM Mr. Agrawa, refused that he has not verified his wkg days.

As per item No.I above, exparty action may be taken.

Sd/-  
30.6.90."

There is no evidence recorded and there is no reference to the documents in the enquiry report nor is there any finding given by the enquiry officer that the petitioner was guilty of the charge levelled against him. The learned counsel for the petitioner also took the following pleas to assail the order of dismissal of the petitioner from service.

- i) In accordance with the Railway Board's instructions dated 24.9.1987 before offering appointment to any casual labour it is incumbent on the appointing authority to verify the previous service record. The appointing authority was not examined by the enquiry officer. Similarly Shri V.K. Saxena SWL, Moradabad who had given a fact finding report was not examined in the enquiry. Thus the key witness in the case was not examined.

ii) The petitioner was not a Railway servant at the time when the alleged misconduct was committed by him. He cannot, therefore, be dealt with in accordance with the Railway Service (Conduct) Rules.

2. The respondents in their counter-affidavit have taken the stand that the petitioner has got himself appointed by a fraudulent means by producing a bogus casual labour card. It is further asserted that in the course of the enquiry the petitioner participated with his defence assistant and relevant documents were produced in the course of the enquiry. They further submit that the enquiry was conducted in accordance with the rules. It is admitted that the enquiry officer has made only a recommendation for taking ex-parte enquiry.


3. On the basis of the record available on the judicial file it is not possible for us to express any opinion in the matter on merits. All that we can say is that the enquiry report leaves much to be decided. The IOW/BLM who was the key witness to be examined has not been examined. The note of the IOW/BLM dated 10.8.1989 also does not form part of the enquiry. The enquiry officer has also not given any finding. He had substituted the findings by his personal investigation leading to the conclusion that the name of the petitioner was not on the live casual labour register maintained in the office of AEN, Hardoi and that the stamp of IOW/BLM did not tally with the stamp which was being used in the said office. The order passed by the disciplinary authority is equally cripted and merely says that

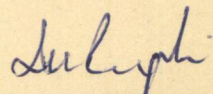
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you are dismissed from service on the basis of your having deposited the forged casual labour card on 31.7.1990. The implication from this order is that the said casual labour card was a bogus card. The said order does not refer to the findings of the enquiry officer possible because there were no.

4. In view of the above facts and circumstances of the case the order dated 10.8.1990 is not legally sustainable. The same is accordingly quashed and set aside. The petitioner shall accordingly be reinstated in service. The period during which he remained outside the department from 10.8.1990 till the date he resumes duty shall count for all purposes, except payment of back wages. The respondents, however, are not precluded from holding an appropriate enquiry against the petitioner, if they so wish, in accordance with law.

5. The O.A. is disposed of as above. No costs.

  
(B.S. HEGDE)  
MEMBER(J)

  
(I.K. RASGOTRA)  
MEMBER(A)

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