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CENTRAL ADMINISTRATIVE ORIBUNAL, PRINCIPAL BENCH

OA No.221/1991

New Delhi, this 3rd day of February, 1995

Mr. Justice S.K. Dhaon, Hon'ble Vice-Chairman(J)
Mr. P.T.Thiruvengadam, Hon'ble Member(A)

Shri Jarnail Singh
s/o Shri Parkash Singh
240, Jagriti Enclave, Delhi-92 .. Applicant

(By Advocate Shri B.S. Maine)

versus

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Rly. Manager
Northern Railway, DRM Office,
State Entry Road, New Delhi .. Respondents

(By Advocate Shri Srivastava, proxy for
Shri Shyam Moorjani, counsel)

ORDER(oral)

(By Mr. Justice S.K. Dhaon)

The applicant was an employee of the Railways. He was given a chargememo. An Inquiry Officer was appointed, who submitted his report to the Disciplinary Authority and on 13.9.90, the Disciplinary authority passed an order removing the applicant from service. On 10.1.91, the applicant was communicated the appellate order, contents of which have been fully quoted in the communication. His appeal was dismissed. The two orders are being impugned in the present application.

2. The gravamen of the charge is that, at the time of his recruitment as casual worker, the applicant produced bogus casual labour card saying that he had worked for a certain number of days under PWI/Aligarh. It is an admitted position that the PWI/Aligarh, under whom the applicant is alleged to have worked, was one Shri Satish Chander and he retired from service and, therefore, he was not in service of the Railways on the date when the enquiry was held.

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3. We note that the applicant was recruited with effect from 22.12.81 on the basis of the alleged bogus card.

However, the charge memo was issued on 17.11.88 ~~with~~ ^{after} the elapse of a period of about 7 years. The applicant made a request that Shri Satish Chander should be examined as he was a crucial witness. However, Shri Satish Chander was not examined. The Inquiry Officer examined the evidence produced before him and recorded the finding that the applicant has not worked during the relevant periods and the card was not issued by the PWI/Aligarh. However, he did not record the finding that during the relevant period Sh. Satish Chander was not the PWI Aligarh. The disciplinary authority has observed that he has gone through the enquiry report and the representation of the applicant carefully and according to him the charge stands proved. He also agreed with the finding of the inquiry officer that the labour card was not issued by PWI/Aligarh.

4. The appellate authority has passed an interesting order.

It runs:

"I have gone through the Inquiry report and appeal submitted by the employee. No new facts regarding his/ misconduct have been brought out and I up hold the view of the DA."

5. Under the relevant Service Rule, the appellate authority is enjoined to 'consider' the appeal. In Ram Chander's case the Supreme Court has considered the import of said expression. In short, the consideration required is objective. It requires due application of mind. It rules

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out the passing of an order mechanically. Time and again it has been emphasized that the order passed by the appellate authority should be a speaking one. On the face of it, the appellate order does not conform to the requirements. Therefore, it cannot be sustained.

6. The question is whether we should quash the order of the appellate authority and ask him to pass a fresh order. Having considered the matter we are of the opinion that this court should not adopt that procedure keeping in view the facts and circumstances of the case.

7. On account of the unexplained delay in the initiation of the disciplinary proceedings, Shri Satish Chandar, who retired from service, could not be examined by the Enquiry Officer. Had he been examined, possibly, he would have supported the case of the applicant.

8. The applicant in his reply to the show cause notice in para 8 has stated categorically that even the pay bills/vouchers of the relevant period were not produced during the enquiry. He goes on to say that the said pay bill/vouchers were the important documents which could prove whether the payment for the relevant period has been made to ~~him~~ him or not. His further statement that the said vouchers were fool proof evidence in the case. In his memo of appeal, the applicant had taken the same plea as in the reply to the show cause notice. In this OA, it is averred that the applicant requested the Enquiry Officer to summon the pay bill/vouchers. This averment is not denied in the reply filed on behalf of the respondents.

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9. Neither the Enquiry Officer nor the Disciplinary Authority nor the Appellate Authority has gone into the particular grievance of the official.

10. The failure of the respondents to produce the pay bills/vouchers has, in the facts and circumstances of this case, resulted in the denial of a reasonable opportunity to the delinquent servant thereby violating Article 311 (2) of the Constitution of India. Therefore, the punishment imposed on the applicant can not be sustained.

11. The application succeeds and is allowed. The orders of the disciplinary authority and the appellate authority are quashed. Having regard to the facts and circumstances of the case, we do not consider it proper to direct payment of back wages to the applicant. However, the applicant shall be reinstated in service on the footing that he continued to be in service with the respondents throughout. He shall be given all consequential benefits in this behalf on that footing.

12. There shall be no order as to costs.

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(P.T.Thiruvengadam)
Member(A)

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(S.K. Dhaon)
Vice-Chairman(J)

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