CAT/7/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(9)

O.A. No. 2831/91 199
T.A. No.

DATE OF DECISION 28.3.1997

Shri Shankar Singh — Petitioner

Shri B.S. Mainee — Advocate for the Petitioner(s)

Versus

UOI — Respondent

Shri O.P. Kshatriya — Advocate for the Respondent(s

CORAM

The Hon'ble Mr. Dr. Jose. P. Verghese, VC(J)

The Hon'ble Mr. S.P. Biswas, Member(A)

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

(S.P. Biswas)
Member(A)
20.3.1997

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2831/91

New Delhi, this 20th March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Shankar Singh
s/o Shri Faqir Chand
House No.39/7, Mandawli, Delhi .. Applicant

(By Advocate Shri B.S. Mainee)

versus

Union of India, through

1. General Manager
   Northern Railway
   Baroda House, New Delhi

2. Divisional Railway Manager
   Northern Railway
   Moradabad

3. Assistant Mechanical Engineer
   Northern Railway
   Moradabad .. Respondents

(By Advocate Shri O.P.Kshatriya)

ORDER

Hon'ble Shri S.P. Biswas

The applicant herein challenges Annexure A-1 order dated 10.9.91 issued by Respondent No.3 imposing up on the former the punishment of removal from service from the post of Substitute Loco Cleaner under the following circumstances.

2. The applicant was appointed as Substitute Loco Cleaner on 7.12.87 under Permanent Way Inspector (PWI in short)/Hapur, after following the prescribed procedure, i.e. interview, medical examination (psychological test) and scrutiny of records etc. The said appointment was made on the basis of applicant's earlier working as casual labour from 1978 to 1982 under PWI, Hapur, Moradabad Division of Northern Railway. While working

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in the above capacity, a major penalty charge-sheet dated 25.1.91 was served upon him alleging that no documents were available to support applicant's claim that he had worked under PWI/Hapur during the period 1975-1982 for 149 days. The applicant replied to the charge-sheet by Annexure A-5 dated 1.2.91 which was followed by yet another communication dated 10.2.91 (A-6) denying the charge and also demanding for supply of the relevant documents on which the charge has been framed.

3. Based on the charge aforesaid, it was held that the applicant has failed to maintain absolute integrity and acted in a manner unbecoming of a railway servant and violated Rule 3(i) and 3(iii) of the Railway Servant Conduct Rules, 1968. The fact that he had earlier worked for 149 days could not be verified due to non-availability of records and therefore the working period of the applicant was wrongly asserted by him to the PWI/Hapur. An Inquiry Officer (IO for short) was appointed, who gave his report to the Disciplinary Authority (DA for short) on 24.6.91 concluding that the applicant was not responsible for the charge framed against him. The DA did not agree with the findings and imposed penalty of removal from service vide order dated 10.9.91. The order says simply that "The eligibility of 120 days verified service prior to 4.10.78 is not proved".

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4. The applicant made a representation on 30.9.91 against the said order of DA. After going through the appeal, the appellate authority(AA for short) on 31.10.91 passed the following order:

> "I have carefully gone through the appeal and find no reasons given for having entries for the same period from two separate PWIs. I agree with the observation of disciplinary authority and reject the appeal. Shri Shankar Singh may please be informed accordingly".

5. Following the rejection of his appeal the applicant has filed this application on 25.11.91 and has prayed for quashing the A-1 impugned order and also issuance of direction to the respondents to reinstate him with all consequential benefits, including seniority, promotion and payment of back wages.

6. It is the case of the applicant that the DA has failed to give any reason whatsoever for not accepting the findings of IO and that as per rule prevelant at the relevant time supply of IO's report was denied illegally. It is evident from the offer of appointment letter itself that the applicant's "previous working period has been verified by the concerned PWI/Spl". In the background of this, denial of any opportunity to the applicant to defend his case is against the principle of natural justice. In support of above submissions, the learned counsel for the applicant placed reliance on the decisions of this Tribunal in the case of Dr. S.C.Miglani Vs. UOI in OA 1990/88 and OA 2438/93—both decided by the Principal Bench, New Delhi on 24.7.91 and 30.9.94, respectively. To buttress his argument, the learned counsel also drew support from the judgement of

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Hon'ble Supreme Court in the case of Narayan Misra Vs. State of Orissa 1969(3) SLR 657. Respondents, on the contrary, submitted that since the original casual labour card was not available in the file, photostat copy could not be relied upon as an authenticated document. Based on available records, it is also argued that the period of 149 days appears to have been made to cover the stipulated eligibility of 120 days prior to 4.10.78.

7. Heard the rival contentions of learned counsel for both parties. The main contention on behalf of the applicant was that principles of natural justice have been violated and the order of the disciplinary authority as well as the appellate authority were arbitrary and perverse. It was also contended that both these orders are passed with any application of mind. The issues that call for determination for the purpose of finding whether there is any violation of principles of natural justice are: (i) whether the order of removal on the ground that the applicant managed to secure employment by producing forged document of his working as casual labour could be sustained in the eyes of law, when the DA held a view totally different from the findings of IO and passed the above order without recording the reasons for disagreement? (ii) Whether an opportunity should have been offered to the applicant to defend his case before issuing order of removal in the circumstances of the present case? and (iii) Whether it was obligatory on the part of respondents to supply a

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copy of the enquiry report before imposing the impugned order? As per the Article of charge, the applicant has been held responsible for seeking the employment as Substitute Loco Cleaner by showing that he had worked under PWI/Hapur which could not be supported by available valid document. The only evidence relied upon by the respondent is a communication of PWI/Hapur dated 29.3.90 indicating that relevant record is not available as it has not been handed over to him by PWI/Spl/Hapur.

8. Ordinarily, the Tribunal has no authority to see and appreciate the evidence adduced before the IO. The Tribunal, however, can see and judge if conclusions have been arrived at on the basis of assailable or unassailable documents. The report of IO goes to show that record pertaining to applicant's earlier period of working as casual labour under PWI/Hapur was not available. This basic charge against the applicant, however, stands controverted by Shri K.B. Mathur - (retired PWI/HPU) - the main witness. Shri Mathur (PWI concerned) admitted that the casual labour card (photocopy) carried his signature and the applicant, alongwith others, was appointed by him, and all the records were made over to Shri S.C. Sharma who was the incharge PWI at the time of his transfer in 1976. In fact, none of the witnesses have disputed applicant's working from time to time between 8.7.78 to 7.9.82.

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9. Rule 9 of D&A Rules, 1968 lays down that the charge against a delinquent has to be established by examining the documents or witnesses produced by the administration in support of the charge. If the witnesses or documents of administration do not support the charge against the delinquent then in no case it can be said that the charge is proved. In the present case, without going through the procedure and the guidelines for appreciating the evidence available on record, the DA has drawn the conclusion on the basis of facts not established. When the record of the relevant period is not available and that is observed by the IO in his report, how it can be said that the charge is proved against the applicant. This is particularly so, when the main witness i.e. PWI/Hapur has himself admitted of not only having appointed the appliant but also of having signed the original casual labour card. His finding when he disagreed with the IO and not recording any reason himself as to why he disagreed smacks arbitrariness and is in violation of Article 14 of the Constitution of India. The conclusion of the DA is, therefore, totally based on conjecture and suspicion.

10. The DA as well as the AA do not appear to have applied their mind. The order passed by the DA does not contain a whisper, what to speak of details of reasons for arriving at a different conclusion. Under Rule 22 of D&A Rules, 1968, the appellate authority while disposing of the appeal is required to observe whether the procedures laid down in the Rule have been complied with and, if not, whether the said non-compliance has resulted in violation of the provisions of the

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Constitution or violation of justice; whether the findings of the DA are warranted by evidence on record and whether the penalty or enhanced penalty imposed is adequate/inadequate or severe and pass order confirming/enhancing/reducing or setting aside the penalty or remitting the case to the authority which imposed or enhanced the penalty or to any authority with such direction as it may deem fit in the circumstances of the case. These procedures do not appear to have been complied with in the present case. Thus, there is total non-application of mind and the order of the appellate authority stating that he agrees with the findings of DA himself is arbitrary inasmuch as the DA himself has not given any reason to disagree with the findings of IO.

11. While considering the various points raised in the memo of appeal, the AA may also afford an opportunity of hearing if there was any doubt regarding the averments made in memo of appeal. This requirement has not been complied with. It is not in doubt that the original labour card was not available with the respondents and yet the applicant is being held responsible for forged document. If the record is not available for a particular period, then the applicant is not to be blamed and the appellate authority should have considered this fact. In fact, there is no evidence that the live casual labour register is not available. Thus the appellate authority has not discharged his function according to the rules.

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12. As regards the failure of the DA to give hearing or opportunity of representation to the applicant, our attention has been invited to a ruling of the Apex Court in Narayan Misra's case (supra) wherein their Lordship categorically held that since no notice or opportunity was given to the delinquent official about the attitude of the punishing authority, the order of removal was set aside being violative of natural justice and fairplay. Although in this case the DA had imposed a major penalty on the applicant, the law of natural justice demands that the applicant should be given opportunity of representing in the matter of disagreement of the DA with the findings of the IO. Relying on the ratio of the said judgement of the Apex Court, we are clearly of the view that failure of the DA to give an opportunity of representation to the applicant has vitiated the inquiry and, hence, the order of DA and that of AA are liable to be set aside.

13. There is yet another infirmity in the proceedings. The penalty of removal from service was imposed by an order dated 10.9.91. In the light of the law laid down by the Hon'ble Supreme Court in the case of UOI Vs. Mohd. Ramzan Khan, AIR 1991 SC 471 decided on 20.11.90 the report of IO should have been supplied to the delinquent official before imposing punishment. The decision in Md. Ramzan Khan has been explained by a constitution bench of the Apex Court in Managing Director, ECIL, Hyderabad Vs. B.Karunakar (JT 1993(6)SC 1). It has been held that where the order of punishment is made earlier to the date of the decision in Ramzan Khan (i.e. 20.11.90), non-supply of enquiry report

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would not vitiate the enquiry. Since order of penalty herein was issued on 10.9.91, non-supply of the report has vitiated the enquiry. This position of law has been made absolute by the apex court while deciding the issue on quashing the order of punishment in the case of State of UP and Anr. Vs. Abhai K. Masti 1995(1) ATJ Vol.18 291.

14. In view of the reasons aforementioned, this OA is allowed with the following orders:

i) Annexure A-1 order of removal from service dated 10.9.91 is set aside. The applicant shall be reinstated in service as substitute Loco Cleaner within one month from the date of receipt of a certified copy of this order, with benefits of seniority from the date of wrongful removal.

ii) There shall be no back wages as the applicant, as per records, was not working against any substantive post with temporary status or confirmation.

iii) The respondents will have liberty to remit the case to the DA to the stage of examination of enquiry report afresh, offer detailed reasons for disagreeing with the findings of IO, supply a copy of enquiry report and thereafter give an opportunity of hearing to the applicant on the point on which the DA disagreed with IO and only after hearing the applicant, pass a reasoned order in the light of the legal position.

15. All these formalities directed herein shall be finalised within a period of six months from the date of communication of this order.

16 There shall be no order as to costs.

(S.P. Biswas)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

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