

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

NEW DELHI THE 18<sup>th</sup> DAY OF MARCH, 1994.

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

OA No. 3050/91

Shri Avinash Chander  
S/o Shri Shyam Sunder  
Substitute Loco Cleaner  
under Loco Foreman  
Northern Railway  
Moradabad

..... Applicant  
Vs.

Union of India: Through

1. The General Manager  
Northern Railway  
Baroda House  
New Delhi
2. The Divisional Railway Manager  
Northern Railway  
Moradabad
3. The Assistant Mechanical Engineer  
Northern Railway  
Moradabad

... Respondents

✓ OA No. 3051/91

Shri Ompal Singh  
S/o Shri Digvijay Singh  
Substitute Loco Cleaner  
under Loco Foreman  
Northern Railway  
Moradabad

... Applicant

vs.

Union of India: Through

1. The General Manager  
Northern Railway  
Baroda House  
New Delhi.
2. The Divisional Railway Manager  
Northern Railway  
Moradabad
3. The Assistant Mechanical Engineer (II)  
Northern Railway  
Moradabad
4. Shri Bajan Lal  
Assistant Personnel Officer (III)  
D.R.M. Office  
Moradabad
5. Shri V.P. Bhatnager  
Assistant Engineer (G)  
D.R.M. Office  
Moradabad

... Respondents

OA No. 3078/91

1. Shri Rajender Singh  
S/o Shri Shyam Singh
  2. Shri Ramesh Chander  
S/o Shri Mangli Prasad
- 84

3. Shri Madan Pal  
S/o Shri Sunder Lal  
Substitute Loco Cleaners  
Northern Railway  
under Loco Foreman  
Moradabad

..... Applicants  
vs.

Union of India: Through

1. The General Manager  
Northern Railway  
Baroda House  
New Delhi.

2. The Divisional Railway Manager  
Northern Railway  
Moradabad

3. The Assistant Mechanical Engineer  
Northern Railway  
Moradabad

... Respondents

For the Applicants ... Shri B.S. Mainee, Counsel.

For the Respondents .. Shri Rajesh, Counsel.

ORDER

JUSTICE S.K.DHAON:

In these three original applications, a common question of law arises. These cases have been heard together and are, therefore, being disposed of by a common judgement.

2. The question for consideration is whether the applicants can be subjected to disciplinary proceedings under the Railway Servants(Discipline and Appeal) Rules, 1968(the Rules).

3. For ascertaining the relevant facts, we are treating OA No.3050/91( Avinash Chander Vs. Union of India & ors.) as the leading case. The material facts in the said OA are these. The applicant worked as a casual worker during June 1973 and September 1984 under the P.W.I Balamau. In pursuance of an advertisement, he applied for the post of Substitute Loco Cleaner in the Northern Railway, Moradabad Division. He was interviewed and the Assistant Personnel Officer scrutinised all the papers and certificates as produced by the applicant. He was subjected to

medical examination by a Railway Medical Officer and found fit. He was appointed as Substitute Loco Cleaner and was posted under Loco Foreman, Northern Railway, Moradabad. He was spared by the P.W.I. Shajahanpur for joining as a Substitute Loco Cleaner. He was placed under suspension in September, 1990. He was issued a memorandum containing a charge-sheet with the allegation that he had produced a forged casual labour card at the time of his appointment and thus failed to maintain absolute integrity and acted in a manner unbecoming of a railway servant and thereby contravened Rule 3(1)(i) & (iii) of the Railway Services(Conduct) Rules, 1966 (the Conduct Rules).

4. We may now, in brief, refer to the statement of the articles of charge issued to the applicant. The substance of the charge is that the applicant derived benefit from a forged casual labour card and became eligible to apply for the post of Substitute Loco Cleaner, the condition precedent being that he worked as a casual worker till 4.10.1978. Further, the applicant managed to secure employment as Substitute Loco Cleaner by manipulating the condition precedent when in fact it was not so and was, therefore, not eligible to apply for the post of Substitute Loco Cleaner.

5. It appears to be the common ground of the parties that the applicants were eligible to be considered for appointment to the post <sup>of</sup> Substitute Loco Cleaners only if they had worked as a casual labourer upto a certain date. According to the charge-sheet, the applicants contravened Rules 3(1)(i) & (iii) of the Conduct Rules.

6. We may straightway consider Rule 3 of the Conduct Rules, as material. It provides that every railway servant shall at all times-(i) maintain absolute integrity;(iii) do nothing which is unbecoming of a railway or Government servant.

7. The simple argument advanced on behalf of the applicants is that since they became railway servants only after their appointment as Substitute Loco Cleaners, the alleged act of producing forged casual labour cards by them prior to their appointment as Substitute Loco Cleaner could not, by any stretch of imagination, be considered to be an act done by a railway servant. This argument though plausible at the first blush cannot withstand deeper scrutiny. Rule 3 enjoins that every railway servant shall at all times maintain absolute integrity and do nothing which is unbecoming of a railway or Government servant. Admittedly, the applicants at the time of their appointment clearly gave out that they were employed as casual workers in the railways on or before a certain date. They continued to give out the said fact either expressly or impliedly not only at the point of time when they were given appointment letters but also when they joined the new service after being relieved as a casual worker. By necessary implication, they continued to do so even thereafter. Their representation that they were employed as casual workers in the railways in their application forms, at the time of their interview, at the time when they were issued appointment letters and at the time when they joined the new post form part of the same transaction. The fact that they were employed as casual labourers in the railways was inextricably

woven up with their appointment as Substitute Loco Cleaners. In any case, the applicants, after becoming railway servants failed to disclose to the relevant competent authority that, in fact, they were not previously engaged as casual workers in the railways. By necessary implication, they gave out that the representation made by them at the time of their appointment that they were employed earlier in the railways failed to maintain absolute integrity and did something unbecoming of a railway or Government servant.

8. It is now settled that employment under the Government is a matter of status and not of contract. The law on the subject has been laid down by the Hon'ble Supreme Court in ROSHAN LAL TANDON & ANR Vs. UNION OF INDIA & OR (1967 SC 1889). It was held as under:

"It is true that the origin of Government service is contractual. There is a<sup>st</sup> offer and acceptance in every case. But once appointed to his post or office the Government servant acquires status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed or altered unilaterally by the Government. In other words, the legal position of Government servant is more one of status than of contract. The hall-mark of status is the attachment of a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emoluments of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of

these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. This matter is clearly stated by Salmond and Williams on Contracts as follows:

" So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status" "

9. In UNION--OF--INDIA--&--ORS--Vs:ARUN--KUMAR ROY(AIR 1986 SC 737), the view taken in ROSHAN LAL's case (supra) has been reiterated. It is observed:

"Thus it is clear and not open to doubt that the terms and conditions of the service of an employee under the Government who enters service on a contract, will, once he is appointed, be governed by the rules governing his service conditions. It will not be permissible thereafter for him to rely upon the terms of contract which are not in consonance with the rules governing the service."

Upon the joining of the service by the applicants, the conduct rules and the rules became a part of the contract of their service. Thus, there can be no escape from the conclusion that it is not open to the applicants to contend that they cannot be subjected to the charge that they had acted in contravention of the Conduct Rules. The argument that, even if they made a misrepresentation of a crucial fact

at the time of their appointment, they cannot be subjected to disciplinary proceedings is clearly not in consonance with the Conduct Rules.

10. The applicants by virtue of their appointment as Substitute Loco Cleaners acquired the status of holders of civil posts for the purpose of Article 311 of Constitution. They acquired a right to hold the post. This was so as their appointment as Substitute Loco Cleaner was not void but was merely voidable at the instance of the railway authorities (See Section 19 of the Contract Act). If the railway authorities <sup>to</sup> int~~eg~~ed either/dismiss or remove or reduce them in rank, it was obligatory upon them to comply with the provisions as contained in Article 311(2). This is exactly what is being done by the respondents by taking resort to the disciplinary proceedings under the Rules which have admittedly been framed under Article 309 of the Constitution.

11. It is now settled that the State while terminating the contract of service cannot act arbitrarily but is required to act fairly and its actions are required to conform with the requirement of Article 14 of the Constitution (See Kumari Shrilekha Vidyarthi Versus State of U.P. and Others, AIR 1991 SC 537). It follows that the respondents are enjoined to at least comply with the principles of natural justice before taking action against the applicants on the alleged ground that they produced forged casual labour card and on that basis misrepresented that they were previously employed as casual workers in the railways. The applicants have to be given a reasonable opportunity to meet the said charge. Rules 9 & 10 of the Rules provide

the details of the procedure to be followed for imposing major penalties. No prejudice will, therefore, be caused to the applicants if disciplinary proceedings are held against them under the Rules. On the other hand, the procedural safeguards as contained in Rules 9 & 10 of the Rules are more beneficial and advantageous to them.

12. Section 19 of the Indian Contract Act, 1872 provides that when consent to an agreement is caused by coercion fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. It is also provided that a party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true. Section 1 of the said Act has one of the marginal notes "Savings". Under this head it is inter-alia stated that nothing in the Act shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any incident of any contract, not inconsistent with the provisions of the Act. Section 19 of the Act, therefore, will not affect the operation of the Rules framed under Article 309 of the Constitution, namely the Rules. It will also have no affect upon the Conduct Rules. Furthermore, the incident of contract in the present case is that the applicants became railway or Government servants. The further incident is that they acquired the status of holders of the civil posts. The holding of a departmental inquiry is an incident of service. The incident of becoming the holders of civil posts is

807

the protection of the constitutional provision as contained in Article 311. The direct effect of an action under Section 19 of the Contract Act for the purpose of avoiding the contract of service would be <sup>the</sup> destruction of the status acquired by the applicants. The practical affect would be that the applicants would stand removed from service and the removal from service would take place without either giving a reasonable opportunity as mandated in Article 311(2) or without giving a reasonable opportunity of hearing as enjoined by the principles of natural justice. It follows that any action taken under Section 19 of the Contract Act without giving a reasonable opportunity to the applicants to defend themselves would be illegal.

13. Reliance is placed by the applicants upon a decision of the Allahabad High Court given by a learned Single Judge in the case of ABDUL AZIZ KHAN Vs. UNION OF INDIA(1974(1) S.L.R.67). In this case, one of the charges against the railway servant concerned was:

" You, in the year 1958, committed gross misconduct and failed to maintain absolute integrity and devotion to duty inasmuch as you secured appointment as cleaner in Loco Department by deceitful means and continued in the Railway service without disclosing true facts to the Administration".

The matter before the High Court was in a second appeal. A suit was filed by a railway servant seeking declaration that his removal from service being illegal he be continued in service. The suit was decreed by the Trial court but the lower appellate court reversed that decree. The validity of the order of removal from service as a measure of punishment was attacked by the plaintiff merely

Suy

on the ground that he was not afforded an opportunity by the inquiring committee to defend himself. One of the arguments advanced in the appeal was that there was no evidence in support of the charge aforequoted. In the operative part of the judgement, it is observed:

" An analysis of the charge will show that the plaintiff was accused of having committed gross misconduct and of failing to maintain absolute integrity and devotion to duty inasmuch as he secured appointment as cleaner in Loco Department by deceitful means. Further he was accused of having continued in the Railway service without disclosing true facts to the Administration. If anything the charge so framed is not only vague to a great extent but also is defective. Securing appointment as Loco cleaner by deceitful means could not be in the course of performance of his duty as a Railway servant by the plaintiff. It is, therefore, not easily understandable how the alleged appointment of the plaintiff as a cleaner in Loco Department would amount to gross misconduct and will show lack of maintenance of absolute integrity and devotion to duty....."

14. We may revert to the charge aforequoted. We have read and reread the charge but we do not find even a whisper in the same that the railway servant concerned secured an employment as a Loco Cleaner by deceitful means in the course of performance of duties as a railway servant. Furthermore, Rule 3 of the Conduct Rules was neither relied upon nor considered in the said judgement. This case is, therefore, distinguishable. Further, we hasten to add that, if the learned Judge intended to lay down the law that even though a railway servant had obtained employment by deceitful means, he could not be subjected to disciplinary proceedings as he did not commit any act of misconduct during the course of his employment, we respectfully disagree.

27

-11-

15. In the result, these applications fail and are dismissed. The authority concerned shall now proceed to dispose of the disciplinary proceedings as expeditiously as possible.

16. There shall be no order as to costs.

(B.N.DHOUNDIYAL)  
MEMBER(A)

(S.K.DHAON)  
VICE-CHAIRMAN(J)

SNS

Original order in OA 3050/91

Attested true copy

Anil Kumar

Co. C 18/3/94

CAT. P.B.

New Delhi

150  
12  
1,500