

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-34/91

Date of decision: 7.4.1992

Shri Gopal Prasad Applicant

Versus

Union of India through Respondents
the General Manager,
Northern Railway & Amr.

For the Applicant Shri G.D. Bhandari, Advocate

For the Respondents Shri Shyam Moorjani, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who has worked as a casual Khalasi in the Railways, has challenged the validity of the impugned order dated 17.4.1990 passed by the Assistant Personnel Officer whereby he has been removed from service. He has prayed for his reinstatement with all consequential benefits.

2. The applicant was removed from service after holding an enquiry in accordance with the provisions of the Railway

Servants (Discipline & Appeal) Rules, 1968. While the applicant has contended that there were several procedural irregularities in the conduct of the enquiry, this has been denied by the respondents.

3. We have carefully gone through the records of the case and have considered the rival contentions. The applicant was appointed as Electric Chowkidar on 1.3.83. On 3.11.1988, a charge-sheet was issued to him in which it was alleged that he had produced a false Casual Labour Service Card for the period 6.8.1977 to 30.10.1977, 12.12.1977 to 23.3.1978, and 13.4.1978 to 26.6.1978, at the time of his appointment as a regular Khalasi. The applicant did not plead guilty and a regular enquiry was held against him. The applicant contends that the alleged false Casual Labour Card was not produced ^{at the time of the enquiry,} nor was a photo-copy of the same supplied to him. This has been denied by the respondents in their counter-affidavit, who have produced a copy of the letter of the Defence Helper dated 30.3.1989 in which it has been stated that he had inspected the contents of the relevant file for the preparation of defence.

4. Another ground of attack is that material witnesses were not examined. The stand of the respondents is that Shri B.K. Kaushal, C.T.F.O., who had appointed the applicant and was to testify about the production of the

(A)

alleged bogus card, was on foreign deputation and was abroad in Turkey and his presence could not have been arranged. In view of this, Shri Rakesh Saxena, CTFO, working in his place, was called for examination.

5. The applicant has contended that the Assistant Personnel Officer was not the appointing authority and, therefore, he could not have removed the applicant from service. The version of the respondents is that the appointing authority for Class IV like the applicant, is the Assistant Personnel Officer or equivalent and as such, the order of removal from service of the applicant has been passed by the competent authority.

6. The applicant has also contended that the penalty order and the appellate order are non-speaking orders. In the penalty order dated 17.4.1990, it has been stated that the charge of producing bogus Casual Labour Card has been proved beyond doubt in the enquiry. The disciplinary authority concluded that the applicant had "cheated" the Railway Administration. The finding of the appellate authority in his order dated 27.7.1990, is also to the same effect. The expression "cheating" used in these orders, cannot be construed literally as it is only an affirmation of the fact that the applicant had produced bogus Casual Labour Card.

7. A copy of the Enquiry Officer's report was given to the applicant and he was given an opportunity to make

a representation. In his representation, he has clearly admitted as follows:-

"On 11.3.82, I met that person at the given place. He demanded two photographs of mine which I gave him, in the same evening that fellow gave me the Card on payment of Rs.50/- on 13.3.82. I went to the said office where my card and application were taken and I was called on 16.3.82. I reached office on 16.3.82 when I was called at 9.00 a.m. on 17.3.82. And I was appointed as Casual Kh. on 17.3.82. Since then I am continuously working as C/Kh except leave WP 8 days.

Sir, I was villager and less educated person. I never knew about the utility of the Card. My intention was not wrong. I did the same what the person guided me because I was in need of service."

(Vide A-9, p.21 of the paperbook).

8. The applicant had made a similar statement in his appeal dated 13.6.1990 addressed to the Divisional Personnel Officer as under:-

"I was appointed as Casual labourer khalisi on 17.3.82 on the basis of casual labour service card No.181774. The card was given to me by one outsider as I have already stated in my statement.

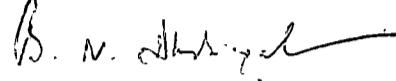
Sir, undoubtedly I was not in the knowledge of the contents of service labour card and its utility. There was no intention of mine to cheat the railway as said in annexure 'A'. I did the same which was being done by some other candidates. Had I been in the knowledge of fact, perhaps I would have not applied."

9. The applicant has stated that he was induced to make such admission as he was in a perturbed and shocked state of mind and he was told that no harm would be done to him. This appears to be an after-thought.

10. In the conspectus of the facts and circumstances of the case, we do not consider it appropriate to interfere with the impugned order dated 17.4.1990 passed by

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the disciplinary authority and the impugned appellate order dated 27.7.1990 passed by the appellate authority. We see no merit in the present application and the same is dismissed. There will be no order as to costs.


(B.N. Dhoundiyal)

Administrative Member


27/7/92
(P.K. Kartha)
Vice-Chairman (Judl.)