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Central Administrative Tribunal
Principal Bench

OA No.746/2004

New Delhi this the 2nd day of May, 2006.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Mahender Kumar,
S/o Shri Bhamma,
R/o P-10/A, Budh Vihar, Phase-II,
Sharma Colony,
NDLS-91. -Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi. -Respondents

(By Advocate Shri B.S. Jain)

1. To be referred to the Reporters or not? YES / ~~NO~~
2. To be circulated to outlying Benches or not? YES / ~~NO~~

S. Raju
(Shanker Raju)
Member (J)

(3)

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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

(By Advocate Shri B.S. Jain)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

By virtue of this OA applicant, an erstwhile loco cleaner, impugns respondents' order dated 16.7.2001, whereby on disciplinary proceedings a penalty of removal from service has been inflicted upon him. He has also impugned order dated 14.12.2001, passed by the appellate authority, confirming the punishment.

2. Applicant, a casual labour, earlier having worked in the Railways under the Inspector of Works (IOW, for short), Balamau between the period 1.6.1978 to 28.2.1982 on notice of regular appointment issued by the respondents on production of all relevant documents, on verification of the working days on medical examination was appointed on substantive basis. A chargesheet issued to applicant on 14.3.1991 for a major penalty alleges forgery of signatures of IOW/BLM for procuring appointment. The aforesaid enquiry culminated into a punishment of removal from service on 2.11.1994, which was challenged in appeal. The appeal was dismissed on 11.3.1996. On a revision petition filed, for want of reasonable opportunity to applicant an order passed on 18.12.1996, ordered de novo proceedings from the stage

of enquiry, which, on conduct, culminated into a finding of not guilty in favour of applicant. On disagreement by the disciplinary authority (DA, for short) vide memo dated 12.11.1999 applicant was imposed a punishment of removal from service, which was assailed in appeal but was affirmed. A revision petition preferred when not responded to by respondents led to filing of the present OA.

3. Shri B.S. Mainee, learned counsel appearing for applicant assails the impugned orders on the ground that Shri S.P. Jutla, the only witness produced though denied his signatures on the working period pertaining to the years 1981 and 1982, had already been proceeded in various disciplinary proceedings, as such his uncorroborated statement has been relied upon to hold applicant guilty of the charge.

4. Shri Mainee contended that the relevant documents like attendance register, pay-sheets, vouchers etc. though demanded, having not been produced in the enquiry caused great prejudice to applicant, as these documents would have demonstrated a clinching evidence of working period of applicant. In this view of the matter learned counsel relied upon a Full Bench decision of this

Tribunal in ***Lal Singh v. General Manager***, Full Bench Judgments (CAT) Vol.III 251 (Bahri Borthers) to contend that the aforesaid decision in case of production of fabricated casual labour service card for want of supply of documents applicant therein was re-instated. Learned counsel also states that the aforesaid decision has been re-iterated by the Principal Bench in OA-1329/95 – ***Jai Pal v. Union of India & Ors.***, decided on 24.8.99 and that the ratio of the same *mutatis mutandis* applies to the present case.

5. Learned counsel would contend that the live casual labour register (LCLR, for short) has been observed to be forged without any basis and one of the witnesses who had certified the working period of applicant which qualifies him for substantive appointment, namely, Shri Qureshi, despite request of applicant, having not been produced, for non-examination of this witness, which could have certified the entire working period, applicant has been greatly prejudiced and the aforesaid procedure contravenes principles of natural justice.

6. Learned counsel further stated that earlier in the enquiry Shri Jutla when appeared had requested the enquiry officer (EO, for short) to produce the paid

vouchers, which had not been procured and on a leading question by the EO as to the signatures of the witness on the casual labour card, amounts to filling up of the gaps.

7. Shri Mainee further contended that the orders passed by the DA as well as appellate authority are non-speaking and are in contravention of Board's PS No.8904. Learned counsel would contend that the DA has taken into consideration extraneous matter to arrive at a finding of guilt and his reliance on the disagreement Note and on an order passed on the testimony of Assistant Engineer, who had not been produced, is denial of opportunity to applicant to reasonably defend and is in contravention of principles of natural justice.

8. Learned counsel would contend that if there is a divergent view of two Benches of which one of the Members is common, then the decision of the larger coram, i.e., the decision of the Full Bench, should over-ride. Moreover, any decision rendered in ignorance of a larger Bench would be per incuriam.

9. Learned counsel states that the request of applicant for examination of the defence witness has been turned down without any basis.

10. On the other hand, Shri B.S. Jain, learned counsel appearing for respondents vehemently opposed the contentions and took a preliminary objection as to the jurisdiction by stating that applicant is not ordinarily residing in Delhi. As such, in the light of the decision of the Apex Court in ***Union of India v. Doodnath Prasad***, 2000 SCC (L&S) 236, the Principal Bench has no territorial jurisdiction without any transfer application being filed.

11. Another objection raised is of limitation. Learned counsel would contend that for want of any application for condonation of delay, the order impugned is of 14.12.2001 and the OA is filed beyond the jurisdiction. He denies receipt of revision petition filed by respondents.

12. On merits, it is stated that verification by Shri B.K. Das was not found reliable, as record was not available at Blm. Applicant, whose working period from 1981 and 1982, which is a pre-condition of working for regularisation as per PS No.9349 having not been legal and based on forged documents, removal of applicant from service has been perfectly legal in the light of the

decision of the Apex Court in ***Union of India & Ors. v. M. Bhaskaran***, 1996 (32) ATC 9.

13. Learned counsel would contend that the role of the Tribunal in a challenge to orders passed in pursuance of the disciplinary proceedings cannot be of an appellate authority to re-apprise the evidence or take a different view on examining the truth or correctness of the charges. The decision of the Apex Court in ***High Court Adjudicator v. Srikanth S. Patel & Anr.***, 2000 SCC (L&S) 144 is relied upon as well as the decision of the Apex Court in ***N. Rajarathinam v. State of Timil Nadu & Anr.***, 1987 (1) SLJ SC 10).

14. Learned counsel has also relied upon a decision of the Division Bench of this Tribunal in ***Gauri Shanker v. Union of India & Anr.***, (OA No.2010/95) decided on 26.8.1999, where the similar claim has been turned down and also a reliance has been made to a decision of the Principal Bench in OA No.930/97 in ***Prithvi Raj v. Union of India & Anr.***, decided on 21.9.2000, to substantiate his plea.

15. Shri Jain stated that all the relevant documents like attendance register, paid vouchers etc. are not available as their life is only for one year and for paid vouchers it is

14 years. As such, it is stated that the decision of the Full Bench in ***Lal Singh*** (supra) is not applicable.

16. Shri Jain has also produced for our perusal the casual labour register as well as the file relating to disciplinary proceedings.

17. On careful consideration of the rival contentions of the parties and on perusal of record, in so far as the objection of respondents as to limitation is concerned, on de novo proceedings suo moto by respondents a punishment of removal inflicted was affirmed by the appellate authority vide order dated 14.12.2001. Thereafter applicant preferred a revision petition, when it is not disposed of led to filing of the present OA.

18. As per Section 21 (3) of the Administrative Tribunals Act of 1985 limitation of one year would not be applicable if applicant satisfies the Tribunal for having sufficient cause for not making of application within such period.

19. Applicant against the appellate order preferred a revision petition in January 2001 and the maximum period prescribed for limitation is 1½ years which had expired in June, 2002. Thereupon applicant as per learned counsel's averments made has been in financial crisis.

20. In the matter of limitation, as held by the Apex Court in ***Rattan Singh v. Vijay Singh***, 2001 (1) SCC 469, a liberal and broad-based construction is necessary. Moreover, as held by the Apex Court in **Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa & others v. N.C. Budharaj**, 2001 (2) SCC 721 and in ***Madras Port Trust v. Himanshu International***, 1979 (4) SCC 176, technical plea has to be avoided by the Government.

21. In the matter of limitation, as held by the Apex Court in ***A. Mohan v. State of Tripura***, 2004 SCC (L&S) 10, though the power is discriminatory but is to be liberally construed.

22. In ***State of Bihar v. Kameshwar Prasad Singh***, 2001 (1) SCSLJ 76, to dispense with justice when explanation of delay does not smack of malafide, the Court must show utmost consideration.

23. Recently, in ***Divisional Manager v. Mannu Barrik***, 2005 SCC (L&S) 200, the Apex Court has held that when there is a serious question of law involved delay has no role.

24. In the light of the above, having regard to the fact that a very substantive question of law of depriving one of

reasonable opportunity before a capital punishment in service law, i.e., removal from service, is inflicted upon a railway servant is involved, in the interest of justice, delay, if any, is condoned.

25. As regards objection of jurisdiction, as per Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987, applicant is residing in Delhi after his removal and as such the aforesaid objection is over-ruled.

26. This is not in dispute that a chargesheet had been issued to applicant on 14.3.1991 on the allegation of having forged the signatures of IOW/BLM for different periods from 1.6.1978 to 28.2.1982. At that time the vouchers and other documents were within the possession of respondents and were not preserved by them. The proceedings were protracted because of respondents and ultimately concluded in 1996. The revision was allowed as the orders were passed in violation of the principles of natural justice and the matter was remanded back for fresh enquiry. The enquiry then culminated in 1999 with imposition of punishment in 2001 and at that time record having not been kept by respondents on which heavy reliance has been placed and required for the defence of applicant,

applicant could not be attributed for any delay or inaction and moreover carelessness of respondents to preserve the record which ultimately affected his defence and denied him a reasonable opportunity to effectively defend his case.

27. On scanning through record of the disciplinary proceedings we find that right from the inception of the earlier enquiry applicant had consistently made a request to respondents to produce on record casual labour card, LCLR, paid vouchers, daily attendance sheet to establish his working period from 1978 to 1982. These documents were admittedly in the possession of respondents. More so, when Shri S.P. Jutla was earlier examined had deposed nothing against applicant and in his testimony recorded on 19.7.97 on questioning by EO he has clearly deposed that for want of availability of the concerned record he is unable to say any thing and had requisitioned casual labour register, casual labour card and paid vouchers for further deposition. In his testimony he has stated on the question whether he knows applicant, he has deposed that under IOW/Blm there were 100 employees working whose control was directly with the IOW and he had no direct dealing with

them and these witnesses are the relevant witnesses to depose.

28. Thereupon, despite requisition of the documents by the EO the concerned authorities showed their inability to provide these documents to the EO and ultimately had not been served upon applicant. The EO in his finding has clearly recorded that the register, casual labour card and the paid vouchers were not available, as such enquiry was proceeded.

29. It is trite law that in the matter of supply of documents relied upon by the prosecution; non-supply thereof would vitiate the proceedings. But, there are documents, which were in possession of Government, which could have been preserved but not produced. If prejudice is shown by the concerned, there would be an infraction to the principles of natural justice and denial of reasonable opportunity to defend.

30. The Apex Court in a Constitution Bench decision of five-Judge Bench in ***Trilok Nath v. Union of India***, 1967 SLR SC 759, in so far as supply of the documents is concerned, observed as under:

> "10. We shall assume for the present that R. 55 of the Civil Services (Classification, Control and Appeal) rules

applies to this case. But this rules requires that the public servant concerned must be afforded an adequate opportunity of defending himself. It is for this reason that it is obligatory upon the Inquiry Officer not only to furnish the public servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed take action against him. Further, if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry Officer or required by the public servant for his defence. That the appellant had made a request for the supplies of copies of documents is clear from the following passage in the report of Shri Sharma:

> "He further pointed out that even the provisions of Civil services (Classification Control and Appeal) Rules had not been complied with and said that he should have been given a statement of allegations, the grounds on which each charge was based, any other circumstances which it was proposed to take into consideration, a list of the prosecution witnesses and copies of the documents on which the prosecution case rested."

Inspite of this compliant the documents upon the perusal of which alone the Inquiry Officer has based his report were not furnished to him. All that the Inquiry Officer had to say about this is as follows:

> "I then informed him that in so far as his objections regarding the supply of documents etc.,

that he wanted to see, but he did not do so. As for the charge-sheet, I thought that was comprehensive enough to enable him to draw a statement which he was bound to furnish under R. 55 of the Civil Services (Classification, Control and Appeal) Rules."

Later in his report, the Inquiry Officer observed:

"I then asked the Raizada for the statement which he was required to submit; but he told me point blank that he had no intention of submitting any such statement."

It may be mentioned that even according to the Inquiry Officer, the appellant did not say that he want to take any part in the Inquiry or that he did not want to adduce any evidence before him. In spite of this, the Inquiry Officer thought that the circumstances warranted his proceeding against the appellant ex-parte. We have no doubt whatsoever that in doing so the Inquiry Officer fell into a grave error. No doubt, the appellant was chary of giving an answer to the charge framed against him and of dealing with the grounds which the charge was based but that was because he apprehended that a charge-sheet might be put up against him. It cannot be inferred from this that the appellant had adopted a defiant attitude and was went on boycotting the inquiry against him altogether. It seems to us that the attitude adopted by the appellant cannot be characterized as unreasonable. His whole idea in objecting to file the written statement was to obviate the use of any statements made by him for the purpose of improving the criminal case. Indeed, it would be clear from the fact that he was insisting on being furnishing with copies of documents on which the Inquiry

> Officer proposed to rely that he did not want to take part in the inquiry proceedings. It is no doubt true that the appellant did not say that he wanted an oral inquiry to be held but it was within the discretion of the Inquiry Officer to hold such an inquiry. Had he decided to do so, the documents would have been useful to the appellant for cross examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised him right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the Inquiry. The Inquiry held must, in these circumstances, be regarded as one in violation not only of r. 55 but also of Art. 311 (2). Accordingly, we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi."

31. What is discerned from the above is that the documents required by a public servant for defence if not made available still it is a denial of reasonable opportunity.

32. In ***Koluthara Exports Ltd. v. State of Kerala & Ors.***, 2002 (2) SCC 459, the Apex Court ruled that in the matter of furnishing documents asked for by the delinquent, relevance of documents is to be gone into.

33. In ***State of U.P. v. Harendra Arora & another***, 2001 (6) SCC 392 the Apex Court holding that in non-supply of the documents prejudice has to be shown, the dicta has been laid down.

34. In ***South Bengal State Transport Corporation v. Swapan Kumar Mitra & Ors.***, 2006 (2) SCALE 141, on non-supply of the documents where prejudice has been caused the Apex Court remanded back the case.

35. In so far as relevancy of the documents is concerned, applicant consistently had taken a stand that the documents, particularly paid vouchers, which clearly reflect as a conclusive evidence as to the working of applicant from 1978 to 1982 on casual basis, the non-supply and production of these documents which were in possession of respondents and particularly when according to their own rules for a period of 14 years the paid vouchers are preserved the paid vouchers pertaining to the year 1978 would have been preserved upto 1992 and as the enquiry was initiated in 1991 the callous attitude of respondents by not preserving the same when right in the year 1991 a request had been made by applicant for supply of the documents for non-supply of these documents he could not effectively defend the

charges and could not establish that he had worked for the period between 1978 and 1982 and the testimony of Shri S.P. Jutla, who in his chief had not stated any thing adverse against applicant and could not complete for want of these documents, applicant has been greatly prejudiced, as on the *ipsi dixit* of the authorities a presumption to the forgery as to the working period and entries in the casual register has been presumed.

36. In our considered view this explanation of prejudice certainly deprived applicant a reasonable opportunity to effectively defend in the enquiry. Though in a departmental enquiry pre-pondernce of probability is the rule without adherence to the strict rules of evidence, yet principles of natural justice as an essence *audi alteram partem* has to be meticulously observed as a fair play and transparency in the action of the administrative authorities. Non-supply of the documents is denial of justice.

37. The Full Bench of this Tribunal in ***Lal Singh*** (supra), on similar allegations, observed as under:

> "It was urged by Smt. Shyamla Pappu, learned counsel for the petitioner that muster roll is the document where names of casual labours that actually worked on each day are entered and that is the primary evidence about the casual

labourer having worked. It was submitted that the entries in the muster rolls are made first and the entries in the wage register are made later. She, therefore, urged that if the name of the petitioner is found in the muster roll as having worked as a casual labour during the relevant periods, it would establish that the casual labour service card produced by him does not contain false information. It is not the case of the respondents that the muster roll is not available. The Inquiry Officer himself accepted the request of the petitioner and directed production of the same. Merely because the request was addressed to the person who was not in custody of the same, even though the name of the officer in whose custody the said muster rolls were available was furnished, there was no justification for not calling for production of the same by addressing a letter to the appropriate authority. The petitioner, in our opinion, is right in maintaining that muster roll is a very valuable piece of evidence for establishing the petitioner's case that he worked as a casual labour during the relevant periods. The petitioner could not have himself produced the same as they were in the custody of the concerned authorities. The Inquiry Officer, therefore, was not justified in not getting the muster rolls produced as there was no real difficulty or hurdle in getting them produced. We have, therefore, no hesitation in holding that the petitioner was denied the opportunity by not securing the relevant muster roll produced which was a valuable piece of evidence to prove his case that he actually worked as casual labour during the relevant period. Hence, we hold that the petitioner was denied reasonable opportunity of defending himself. It is on this short ground that the order of the disciplinary authority and that of the

appellate authority affirming the same are liable to be quashed."

38. The aforesaid is binding on us and *mutatis mutandis* applies to the present case and we respectfully follow the same.

39. A Division Bench of this Tribunal, taking cognizance of the Full Bench decision (supra) in ***Jai Pal Singh's*** case (supra), on non-supply of the documents allowed the OA.

40. The decision cited by the learned counsel of respondents in ***Gauri Shanker*** (supra) has not taken into consideration the binding precedent in Full Bench decision in ***Lal Singh*** (supra) and held that non-supply of the relevant documents is irrelevant, is distinguishable and a decision *per incuriam.* Moreover, the decision of the Tribunal in ***Prithvi Raj*** (supra) is an authority on different facts and circumstances where a school certificate was forged, could not be authenticated and the denial of reasonable opportunity was not an issue and is out of context.

41. As regards decision of the Apex Court in ***M. Bhaskaran's*** case (supra) where persons procuring employment in Railways on the basis of fake and bogus

cards the Apex Court ruled that one cannot be allowed premium on dishonesty and sharp practice, was of the view that the forgery and production of bogus card has been duly established on the record of the departmental enquiry has not gone into the question of denial of reasonable opportunity and violation of principles of natural justice. In this decision it was not the compliant that the enquiry has not been held in derogation of the principles of natural justice. Accordingly the Constitution Bench's decision in ***Trilok Nath*** (supra) over-rides and is a binding precedent and cannot be distinguished on the issue.

42. Another issue raised is of non-examination of the material witnesses and not calling the official witnesses. From the perusal of the casual labour card it transpires that one Mr. Qureshi has certified working period of applicant from 1978 to 1981 of 486 days, when Shri Jutla appeared as a witness when pitted against a question as to verification of the working period before 1982 he has clearly deposed that the signatures appears to be of Mr. Qureshi. From the scanning of the record it transpires that applicant had made persistent requests for calling Mr. Qureshi as a witness and his examiantion. This has been apparent from the letters written by the

EO to the competent authority for production of Mr. Qureshi who was working with the respondents. However, in the wake of the refusal of the authorities to produce this witness, ultimately the request was turned down and enquiry proceeded vide EO's remarks dated 5.7.1997. The aforesaid if had been examined certainly would have proved the working period of applicant from 1.6.1978 to 14.12.1980. It is in this context that the charge levelled against applicant is not only forging the documents and signatures of IOW/BLM but also IOW/BLM for the period 1.6.1978 to 1980, which pertained to the period when Shri Qureshi was working as IOW.

43. In so far as examination of witnesses is concerned, a Constitution Bench of the Apex Court in ***Union of India v. T.R. Verma***, 1958 (1) SCR 499, held that when a charge is supported by allegations to be proved by a witness, withholding of such witness and non-examination would be an infraction to the principles of natural justice and held as under:

> "Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they

> may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co. v. New Suwarna Transport Co.* (1957 SCR 98), where this question is discussed."

44. If one has regard to the above, on non-examination of this witness the charge against applicant of forging the signatures of IOW, Mr. Qureshi for the period 1978-1980 has not been established without any reasonable basis. The witness despite being available and working with the respondents has been withheld shows the bent of mind of respondents and non-following the procedure. For want of examination of this witness and with an opportunity to cross-examination to applicant he could not establish his

working with the IOW/Blm Mr. Qureshi and has been greatly prejudiced. Moreover, any material relied upon, if withheld, would constitute infraction to the principles of natural justice.

45. The Apex Court in ***Hardwari Lal v. State of U.P.***, 1998 (8) SCC 582, ruled as under:

> "3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

46. In another case, the Apex Court in **Kuldeep Singh v. Commissioner of Police & Ors.**, JT 1998 (8) SC 603, in so far as examination of witnesses is concerned, held

that non-examination of material witnesses to support the charge would vitiate the enquiry.

47. On this ground, we have no hesitation to hold that applicant being prejudiced has been deprived of a reasonable opportunity to defend, which cannot be countenanced in law.

48. As regards chargesheet, we find that whereas applicant has been held guilty of managing employment by forging documents, including his working from 1.6.1978 to 28.2.1982, the EO has held him not guilty on the ground that as per verification of working period and medical memos the charge could not be established. The DA while disagreeing relied upon one letter dated 23.11.1992 where casual labour register was declared unauthentic is an extraneous matter, which has not been put to applicant, and in the matter of disagreement and imposition of punishment he has been denied a reasonable opportunity.

49. The DA in its order has recorded that to fulfill the condition of working after 1.1.1981 applicant with the collusion of office staff showed the working in 1982 and the original register could not be produced as the same was destroyed by the office with the collusion of

applicant. The aforesaid charge had never been levelled against applicant and being an extraneous charge the punishment of removal has been inflicted upon applicant.

50. The Apex Court in ***Management of*** **Krishnakali Tea Estate v. Akhil Bhartiya Chah Mazdoor Sangh**, 2005 (1) SLJ SC 197 held that when the charges are not mentioned in the chargesheet it cannot be used for imposing penalty. We are satisfied that the aforesaid charge had never been levelled against applicant on which he had been imposed a punishment, cannot be sustained, as applicant being prejudiced for want of an opportunity to defend the action of respondents is in contravention of the principles of natural justice.

51. We are also of the view that it is no more *res integra* that Mr. Jutla had appeared in many of the cases and for which on issuance of certificate, certifying the working period of casual workers he had been facing an enquiry, though initially in his examination-in-chief he could not remember the particulars and had not deposed for want of documents. In this view of the matter these documents sought for by applicant and their authenticity

gains more importance and relevance, as the testimony of applicant for this witness was not trustworthy.

52. On perusal of the record we are also of the considered view that when a witness had not deposed any thing in furtherance of the allegations levelled against applicant the EO who has to act impartially by assuming the role of a prosecutor with a view to fill up the gaps especially when the witness had not deposed as to the authenticity of signatures put a straight question as to whether the register contains his signatures or not and in the reply thereof when it is denied, the aforesaid statement is solely relied upon to hold the charge against applicant proved, which cannot be countenanced in law.

53. In the matter of disciplinary proceedings we are conscious of our role but when there is a case of 'no evidence' or legally inadmissible evidence has been considered and there has been a breach to the substantive provisions of procedure causing prejudice to applicant in contravention of the principles of natural justice, this Court has jurisdiction to interfere.

54. In the result, for the foregoing reasons, leaving open the other grounds, the OA is partly allowed. The respondents are directed to re-instate applicant in service

forthwith. He would be entitled to all consequential benefits, including 50% back wages, having regard to the facts and circumstances of the case. No costs.

S. Raju
(Shanker Raju)
Member (J)
2/5/2006

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

'San.'