

In the Central Administrative Tribunal
Principal Bench, New Delhi

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Regn. No. 1. OA-1625/92, and
2. OA-1591/92

Date:

11.6.93

1. Shri Shiv Raj Singh) Applicants
and Others }
2. Shri Ho Ram and 13 Ors. ... }

Versus

- Union of India & Ors. Respondents
For the Applicants Shri B.S. Mainee, Advocate
For the Respondents Shri R.L. Dhawan, Advocate

CORAM: Hon'ble Mr. I.K. Rasgotra, Administrative Member
Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not? *yes.*

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicants, S/Shri Shiv Raj Singh, Mohinder,
and Kishan Dhari Ram, jointly filed this application, being
aggrieved by the orders dated 22.8.1989 and 6.4.1992 passed
by the Assistant Engineer (Special), Ambala. Both these
orders relate to departmental enquiry under Railway Servants
(Discipline and Appeal) Rules, 1968. The order dated 22.8.89
is regarding the serving of memo. of charge-sheet on the
applicant and the order dated 6.4.1992 is a show-cause notice
issued to the applicant enclosing the findings of the Enquiry
Officer directing the applicants to make representation
against the same.

2. In OA-1591/92, Shri Hori Ram and 13 other applicants
have also assailed the order dated 22.8.1989 and order dated

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16

6.4.1992 passed by the Assistant Engineer (PQRS), Northern Railway. The facts of this case are also similar to that of OA-1625/92 inasmuch as these applicants were also appointed by the PWI (PQRS), New Delhi in 1983/1984 in the PQRS organisation and had worked at various places under PWI (PQRS) and were, at the time of filing this application, working on the track near Railway Station Doraha. They were also served with a memo. of charge-sheet for major penalty dated 22.8.1989 charging the applicants that they secured appointment as Gangmen under PWI (PQRS), Safdarjung, New Delhi, on the basis of fictitious casual-labour card containing bogus entries of working prior to the appointment and paid Rs. 200/300 to the PWI for securing a job of Gangman and thus contravened Rule 3 of the Railway Servants (Conduct) Rules.

3. Since both these original applications have the same issues involved of law and facts, we dispose them of by way of a common judgement. An order was also passed in the above O.A. 1591/92 restraining the respondents from passing and communicating any order on the disciplinary proceedings initiated by them and that order continues till today.

4. The applicants have claimed the following reliefs:

- (a) The impugned orders aforesaid be quashed;
- (b) Any other further relief deemed fit be granted to the applicants; and
- (c) the cost of the proceedings also be awarded to the applicants.

7

5. The applicants also claim an interim relief that the respondents be restrained from passing/communicating any order on the basis of the impugned orders till the final disposal of the application.

6. When the matter came before the Bench on 26th June, 1992, the Single Judge passed the following ex parte order:-

"In the meanwhile, the respondents are restrained from passing any order on the disciplinary proceedings initiated by them against the applicants."

That interim order continued from time to time by the orders passed by the Bench on different dates and the case was listed. The matter had been finally heard with the consent of the parties at the admission stage itself.

7. The case of the applicants is that they were appointed as Casual Labour Gangmen in 1980/1984 by Shri Amrik Singh, PWI (PQRS) Delhi, Safdarjung, New Delhi. The applicants, since their appointment, had been working in the PQRS organisation and at the time of the filing of the application, they were working on the track near railway station Doraha. While they were working as such, the memo. of charge-sheet for major penalty was served on them by the memo. dated 22.8.1989 alleging that the applicants had secured appointment as Gangmen under PWI (PQRS), Safdarjung, New Delhi, on the basis of fictitious casual labour cards containing bogus entries of working prior to their appointment and also paid Rs.150/- to Shri Amrik Singh, PWI (PQRS) New Delhi, Safdarjung, for securing these appointments. It is alleged that the applicants have contravened Rule 3 of the Railway Servants (Conduct) Rules, 1966. The relief claimed is for quashing of the charge-sheet on the ground that when the applicants got employment even though, as alleged, by deceitful means, then, they cannot be proceeded against for misconduct under Railway

18

Servants (Conduct) Rules, 1966.

8. The respondents contested this application and averred that the applicants are governed by Railway Servants (Disciplinary and Appeal) Rules, 1968. The charge-sheet was issued to them in August, 1989 and after the proceedings are complete in the departmental enquiry, the present application has been filed on 26.6.1992, which is barred by Section 21 (1) of the Administrative Tribunals Act, 1985. The applicants have already been served with show-cause notice with the findings of the Enquiry Officer and the relief the applicants are seeking, can be sought from the disciplinary authority as well as from the appellate authority under the relevant Discipline and Appeal Rules, 1968. The applicants cannot come directly before the Tribunal without exhausting the departmental remedies, as provided under Section 20 of the A.T. Act, 1985. Thus, according to the respondents, the application is premature and is also barred by limitation. The respondents also, in their reply, have referred to certain statements made by the applicants admitting that they were never engaged prior to 1983/1984 in the Railways. Since the applicants did not satisfy the conditions prior to their appointments as Casual Labour Gangmen and have not admittedly worked in the Railways prior to 3.11.1981, their appointment was ab initio illegal and was obtained by fraudulent means. The applicants have already submitted their representations to the impugned show-cause notice dated 6.4.1992 and as such, they are not entitled to any relief.

9. We have heard the learned counsel for the parties at length and perused the records. The learned counsel for the applicants referred to the decision of a Division Bench

19

(Principal Bench) in OA-486/90 between Lal Singh and General Manager, Northern Railway, Baroda House, where there being a difference of opinion between the Hon'ble Members of the Bench, so by order dated 3rd April, 1992, the same was ordered to be placed before the Hon'ble Chairman for reference to a Larger Bench or third Bench. In view of this, an order was passed on 11.2.1993 that the Registry may keep a watch over the disposal of the aforesaid reference, but the matter was ordered to be listed again before the Bench on 10.5.1993. A perusal of the judgement in the case of Lal Singh goes to show that the case was finally disposed of by the administrative authorities, both by the disciplinary authority as well as the appellate authority. While in this case the matter is still pending before the departmental authorities and no final order has been passed in view of the interim directions issued in the form of injunction not to pass any order by the order dated 26th June, 1992.

10. It shall, therefore, not be in the interest of the parties as well as in the interest of justice to give a finding unless the departmental remedies are exhausted by the applicants.

11. Since the applicants have already joined the disciplinary proceedings which have also come to an end, the departmental authorities be allowed to complete the proceedings. The applicants cannot challenge the charge-sheet of 1989 when already the Enquiry Officer had submitted his report to the disciplinary authority. Otherwise also, in view of the decision of the Hon'ble Supreme Court in the case of S.B.

20

Rathore Vs. the State of Madhya Pradesh, reported in A.I.R. 1990 S.C. 10, no challenge to the charge-sheet can be made after the period of limitation. The applicants had joined the enquiry and if they had any grievance, they should have challenged the same within the period of limitation after making a representation, as envisaged under Section 20 of the A.T. Act, 1985. They having not done so at the relevant time, cannot raise that issue at this stage. The applicants, however, shall be free to challenge any final order if they are still aggrieved and take the ground which they have already taken regarding the memo. of charge-sheet, etc.

12. The learned counsel for the applicant also relied on a number of authorities on the validity of the charge-sheet. But the same cannot be adjudicated upon when the matter is still pending finalisation before the disciplinary authority and a right shall be available to the applicants to assail the order of the disciplinary authority by way of appeal under the statutory rules.

13. The learned counsel for the respondents has placed reliance in the decision of the Principal Bench in OA-1600/92 - Virender Singh & Others Vs. Union of India - decided on 12th May, 1993. In that case also, after the furnishing of the Enquiry Officer's report to the petitioners of that case, they were asked to give their comments within 15 days. The petitioners at this stage came to this Tribunal and obtained an interim order that a final order be not passed in the disciplinary proceedings. The Principal Bench decided the same by dismissing the same as premature directing that the punishing authority shall examine the Enquiry Officer's report with an open mind and pass orders, keeping in view the explanation offered by the petitioners.

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14. In view of the above facts and circumstances, the present O.As are premature and are, therefore, dismissed with liberty to the applicants to agitate the matter even on the grounds taken in the present application if they are still aggrieved by the final order passed in the departmental proceedings. The interim direction issued on 26.6.1992 is hereby vacated. The parties are left to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (J) 11.6.92

I. K. Rasgotra
(I.K. Rasgotra) 11/6/92
Administrative Member