

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1654/92

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New Delhi, this the 2nd day of December, 1997

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

Diwakar Ranjan,
s/o late Shri Vijay Prakash Tyagi,
JP 51, Maurya Enclave,
Delhi.

...Applicant

(By Advocate: Shri G.D. Bhandari)

Vs.

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

...Respondents

(By Advocate: Shri O.P.Kshatriya)

O R D E R

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

The petitioner in this case was removed from service after holding disciplinary enquiry and he is challenging the order of removal dated 1.1.1992 as well as the order in appeal dated 3.3.92. The petitioner was a casual labourer and holding the post of Substitute Loco Cleaner at Chandausi Moradabad Division of Northern Railway and worked about 105 days. He has been appointed in the same division on various dates and the final leg of his service as a casual labour under Inspector of Works from 26.10.1990 and the petitioner had found guilty of the charge that the petitioner was managed to secure employment on the basis of false means. He was found guilty of the charge alleged and a penalty of removal from service was awarded on 1.1.1992. It is alleged that the order of

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removal passed by the respondents was cryptic and stereotyped and so too, the appellate order without assigning any reason. The contention of the counsel for the respondent was therefore that both the orders of removal as well as appellate order dated 3.3.1992 are all in order in as much as the same has been passed without assigning any reason and without proper application of mind. It was also alleged that both the order of removal as well as appellate order by which the appeal of the petitioner was rejected, are bad to the extent that full opportunity has not been given to the petitioner during the enquiry, thereby violating the principles of natural justice as well as provisions contained in Article 311 of the Constitution of India. It was submitted that the decision arrived at to remove him was based on surmises and the crucial documents namely the work experience certificate and the muster roll register was never produced during the enquiry and the said documents were not produced on the ground that the same was not available. It was also submitted that these crucial documents were in fact available and the same had been alleged to have been issued by one Mr. M.K. Aggarwal who had been proceeded against through a separate departmental proceedings. By an order dated 5.3.1992 Sr. Divisional Operating Superintendent Muradabad passed the following order in the said case of Shri M.K. Aggarwal:

"I have carefully gone through the enquiry report and the findings submitted by the Inquiry Officer wherein you have not been held responsible. I accept the finding of the Inquiry Officer and the case is closed".

Inspite of the said finding in the inquiry held against Shri Aggarwal, on the basis of which his case was closed, the appellate authority did not revert to these facts and seems to have passed the appellate order in this case without any application of mind.

The learned counsel for the petitioner relied upon the decision of this court in the case of Anepal Singh Vs. Union of India dated 23.12.1992 in OA No. 06/92 wherein it was held:

"3. During the disciplinary enquiry reliance was placed on the preliminary enquiry but the applicant was not given copy of the same and opportunity to cross-examine the person on whose statement of which the said report was given. According to the respondents record of the applicant was not available. No person should be held responsible for an act of omission or commission without proof of the same. The applicant was not to prove the same thing which he could not have and Railway Administration was responsible to prove and in the absence of any document the applicant could not have been held guilty on the basis of vague charge-sheet or suspicion. Position could have been proved by the respondents and not by the applicant who failed to prove the same."

The reliance was also placed on a recent decision of this court in Mool Chand vs. Union of India in OA No. 1343/94 decided on 28.10.96 wherein this court has held:

"It is settled law in this country as else where that every quasi judicial order must be supported by reasons. Such reasons are required to be stated. The reviewing authority has to examine the legality or propriety of the order, and the person against whom the order is made is entitled to know the reasons upon which the order is passed. We are distressed to note that a responsible official authority has passed an order leading to the removal of an employee

under him, without even the charity of stating the reasons that persuaded him to a drastic course. Arbitrariness will be the order of things, if authorities are permitted to act on impulses. The safe guard of stating reasons cannot be dismissed with except at peril to the rule of Law. In these circumstances, we are constrained to quash the order of the Disciplinary Authority, as also the order of the Appellate Authority confirming the same."

Two other decisions were also cited before us, namely, one decided on 13.10.1997 in OA 622/93 and the decision of Division bench of this Tribunal in OA 532/93 dated 18./8.1997 in the matter of Raj Kumar Vs. Union of India. Finally the counsel for the petitioner also relied upon the decision of this court in OA 486/90 decided on 10.8.1993 in the matter of Lal Singh vs. General Manager NR, a full bench decision wherein it was held:

"It was contended by Smt. Shamala Pappu, learned counsel for the petitioner that the impugned orders are liable to be quashed on the ground that petitioner was denied reasonable opportunity of being heard in this case. As already stated, the charge which the petitioner was required to meet is that the casual labour service card produced by him as a false and bogus is a bogus and concocted documents. It is not the allegation nor is there any charge to the affect that the signature on the casual labour service card is a forged one. The petitioner tried to meet the charge levelled against him by taking the stand that the casual labour service card that the casual labour service card as he had actually worked as a casual labour during the periods mentioned in the said card. So it was for the petitioner, who tried to establish that he infact worked as a casual labour during the periods specified in the card. For establishing this part of the case pleaded by him, he made an application to the Enquiry Officer to get the muster roll of the concerned office for the relevant period produced. The Enquiry Officer passed an order as per Annexure A-5 dated 7.6.1988 accepting the request of the muster roll and adjourned the case for the purpose to 21.6.1988. But the officer to whom the requisition was sent, replied to the Enquiry Officer stating that he cannot produce the

relevant records they being not in his custody. He pointed out that they can be had from another office, particulars of which he furnished. The Enquiry Officer instead of summoning the muster roll from the officer who had the custody of the same, proceeded to hold the enquiry. He has held that as the wage register has been produced, which does not contain the name of the petitioner, there was no need to look into the muster roll. He appears to have proceeded on the basis that if the petitioner's name is not in the wage register, his name cannot be there in the muster roll. It was argued 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 labour 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 of the respondents that the muster roll is not available. The Enquiry 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 enquiry 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".

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This matter had come up for hearing on 4.8.1997 on the regular board and finding that none of the parties were represented in spite of the fact that the case remained on regular board for quite some time, we had proceeded to look into the file and passed an order dismissing the same by an appropriate order. Aggrieved by the said order the petitioner filed an RA vide RA No. 211/97 and after notice this petition has come up for hearing today, for final disposal. The respondents appeared and arguments were heard and after hearing the RA it was decided that the RA be allowed and thereafter the OA was taken on file and reserved for judgement.

It is under these circumstances that this OA is being disposed of today.

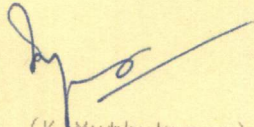
In the circumstances and after going through the entire material on record as well as the decision cited at the Bar, and on the basis of our own findings, we are inclined to allow this petition to the extent stated hereinbelow:

- The impugned removal order as well as the appellate order are hereby quashed and the respondents are directed to reinstate the petitioner in service within three months from the date of the receipt of a copy of this order without any back wages or any other consequential reliefs except those stated hereinbelow in this order. The reinstatement shall be treated as appointment in the same cadre without break in service. The petitioner's pay shall

be fixed as if he had continued in service without interruption by the order of removal and count his service for this limited purpose only.

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- There shall be no order as to costs.



(K. Muthukumar)
Member (A)

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