

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1658/92

New Delhi, this 18th day of September, 1997

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. S.P. Biswas, Member(A)

Shri Dinesh Kumar
s/o Shri Ram Parshad
359/7, Village Mandoli
Fasilpur, Delhi

.. Applicant

(By Advocate Shri B.S. Mainee)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Divisional Railway Manager
Northern Railway
Moradabad .. Respondents

(By Advocate Shri N.K. Aggarwal)

ORDER

Hon'ble Mr. S.P. Biswas

Applicant, a Substitute Loco Cleaner under Loco Foreman Moradabad of Northern Railway, is aggrieved by Annexure A-1 order dated 06.09.91 by which he has been removed from services with immediate effect. Consequently, he has prayed for quashing the impugned order as well as issuance of a direction to respondents to reinstate him with all consequential benefits including back wages.

2. The applicant has challenged the aforesaid A-1 order on the basis of the following:

(i) The charge that the applicant has failed to maintain absolute integrity and devotion to duty of a railway servant is absolutely baseless and misconceived;

(ii) that the respondents have not shown reasons as to why and when the applicant has contravened Rule 3.1(i)(ii)(iii) of the Railway Servants Conduct Rules, 1966;

(iii) the charge of securing employment by the applicant by furnishing fake certificate is absolutely false and fabricated since the applicant was appointed after scrutiny of original papers by the competent authority;

(iv) that a copy of the enquiry report should have been supplied before imposing order of penalty of "removal" from service.

(v) that the enquiry report is based on surmises and conjectures and there were lack of adequate evidences/documents in support of the charges.

3. During the course of the arguments, the learned counsel for the applicant submitted that this case is covered by a decision dated 9.5.97 given by a Bench of this Tribunal in OA-1844/92. We have carefully studied the aforesaid O.A. alongwith the decision and we find that that was the case where the enquiry officer found the charges to be proved and accordingly on that basis the Disciplinary Authority imposed penalty of dismissal from service which was affirmed in appeal by the Appellate Authority. Admittedly, no copy of the enquiry report was supplied to the applicant, thereby

denying the latter any opportunity to represent his case. Based on the decisions of the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad Vs. B. Karunakar (JT 1993(6) SC 1), this Tribunal held that it is necessary on the part of the Disciplinary Authority to provide the applicant with a copy of the enquiry report before imposing the penalty of removal from service and since that was not done, the imposition of penalty was held to be vitiated.

4. After having perused the records placed before us, we find that the present case is not covered by the decision of this Tribunal in OA-1844/92 decided on 9.5.97. In the present case, the applicant has denied receipt of the enquiry report prior to passing of A-1 order. This has been disputed by the respondents in no uncertain terms.

5. That apart, we also find that this application is full of other ancillary claims and corresponding counter claims, unlike the case cited by the counsel for the applicant. We are, therefore, not in a position to accept the contention of the learned counsel for the applicant that the decisions in OA-1844/92 were squarely applicable to the facts and circumstances of the present case.

6. We have perused the records carefully and find that the main thrust of the applicant's attack i.e. non supply of enquiry report is in itself in controversy. It is well settled in law that the Courts/Tribunals are not to make roving enquiries and enter into finding based on unsubstantiated evidences/documents. If any authority is required for this proposition, it is available in Hamsaveni Vs. State of Tamil Nadu (1994 SCC (L&S) 1277) and Ram Pal Malik Vs. State of Haryana (JT 1994(5) 74).

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7. We also find that the applicant has challenged the enquiry report on the basis that it is based on conjectures and non-availability of reliable documents. As per applicant's own submission, the charges framed against him were based on reports/statements of two witnesses, both belonging to railway services. But he did not question the veracity of ~~these~~ statements during the course of proceedings. On the pleadings, the applicant has not come out with a clear case as to how the enquiry has been vitiated. We further find that based on records available and statement of witnesses, the charges against the applicant stand established and the enquiry officer has concluded the proceedings with a finding that:

"Shri Dinesh Kumar, Sub. Loco Cleaner under LD/MB committed misconduct/misbehaviour as much as he secured employment by furnishing the fake of casual labour working certificate of SM/ATKS".

We find no reasons, much less convincing ones, to interfere with this finding.

8. As has been laid down by the Hon'ble Apex Court in the case of U.O.I. Vs. Parma Nanda (1989(1) Scale 606), if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or of the

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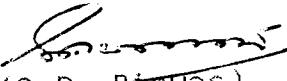
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competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. From the records placed before us, there is no escape from the conclusion that the enquiry proceedings were conducted as per law laid down on the subject. No interference is called for.

9. For the reasons afore-mentioned, the O.A. fails on merits and deserves to be dismissed. We do so accordingly, but in the circumstances without any order as to costs.

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(K. M. Agarwal)
Chairman


(S. P. Biswas)
Member (A)

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