

Central Administrative Tribunal
Principal Bench

O.A. 1670/92.
O.A. 712/94
and
O.A. 759/94

(18)

New Delhi this the 31st day of December, 1997

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 1670/92

Pramod Kumar,
S/o Shri Sita Ram,
Ex-Sub-Loco Cleaner,
Loco Shed,
Northern Railway,
Moradabad.

... Applicant.

By Advocate Shri G.D. Bhandari.

Versus

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

By Advocate Shri O.P. Kshatriya.

O.A. 712/94

Mohinder Kumar,
S/o Shri Ram Charan,
Ex-Sub-Loco Cleaner,
Loco Shed,
Northern Railway,
Moradabad.

... Applicant.

By Advocate Shri G.D. Bhandari.

Versus

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

None for the respondents.

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O.A. 759/94

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Mahendra,
S/o Shri Sant Ram,
Ex-Sub-Loco Cleaner,
Loco Shed,
Northern Railway,
Moradabad. Applicant.

By Advocate Shri G.D. Bhandari.

Versus

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

None for the respondents.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

As the facts and issues involved in these three applications (O.As 1670/92, 712/94 and 759/94) are similar, they are being disposed of by a common order. The applicants in these cases were proceeded against in one joint proceeding by the respondents and all of them had been removed from service by order dated 15.1.1992. The similar appeals filed by them had also been rejected by order dated 6.4.1992.

2. For the sake of convenience, the facts in O.A. 1670/92 have been referred to. The applicant is aggrieved by the respondents letter dated 15.1.1992 removing him from service and rejection of his appeal by the appellate authority by order dated 6.4.1992. The applicant claims that he was appointed as Casual Labourer on 15.9.1978 under the Inspector of Works (IOW) Balamau, Northern Railway in Moradabad Division and he worked upto 31.3.1982

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in various short spells for a total number of 380 days.

In pursuance of the respondents' circular issued in the year 1987 inviting applications, he had applied for the post of Substitute Loco Cleaner in the grade Rs. 740-950. He submits that since he had rendered previous service with the respondents, after the respondents had verified his working days, he was allowed to appear in the Screening Test and thereafter he joined as Substitute Loco Cleaner on 16.7.1988. Later, the applicant was chargesheeted by memo dated 7.9.1990 that he had committed misconduct inasmuch as that he had produced a fake casual labour card of IOW/BLM to secure employment as Substitute Loco Cleaner, forging the signature of the then IOWBLM Shri S.P. Jutla; further, that the Scholar's Register and Transfer Certificate produced by him in proof of his age and qualification was also fake. The departmental inquiry was held against the applicants and on the conclusion of which the impugned orders have been passed removing them from service.

3. The learned counsel for the applicant has impugned the penalty orders on a number of grounds, namely, (1) that the common proceedings taken against the applicant have not been conducted properly in accordance with the rules after getting consent of the competent authority; (2) The Inquiry Officer had in the case of Pramod Kumar held that part of the charge regarding production of fake scholar's register and TC No. 863 misleading his age and qualification was not proved, whereas in the impugned order removing him from service, the disciplinary authority has not taken into account this fact; (3) the penalty order dated 15.1.1992 has not been

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served on him; and finally (4) that the appellate authority's order is a non-speaking order which does not give any reasons or reference to the points he had taken in his detailed appeal dated 20.2.1992; and (5) that in the Inquiry report, reference has been made to the vigilance inquiry which was conducted, in this connection, copy of which was not supplied to him, which is contrary to the Railway Board's Circular No. 4355 dated 24.8.1968.

4. The respondents have filed their reply denying the material averments made by the applicant. They have stated that the applicant did not fulfil the eligibility conditions, namely, the number of days he was supposed to have worked earlier and he had produced forged documents to secure employment by illegal means which had been detected during the vigilance investigation. They have submitted that as the applicant had produced fake casual labour card which was held proved in the inquiry, the penalty order had been passed by the disciplinary authority removing the applicant from service which had been confirmed in appeal. They have also submitted that one of their employees Shri S.K. Dass who was also involved in the forgery has also been chargesheeted for his involvement in the matter.

5. We have also seen the rejoinder filed by the applicant in which he has more or less reiterated the same averments as in the application.

6. We have considered the pleadings and the submissions made by the learned counsel for the parties. It is seen from the other two O.As (712/94 and 759/94)

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that these applicants had filed earlier two applications (O.A 1672/92 and O.A 1673/92) which were disposed of by the Tribunal by a common order dated 9.7.1993. In these cases, the Tribunal had noted that the gravamen of the charge against both of them is that they have secured employment by producing fake Casual Labour Cards. By order dated 15.1.1992 they were dismissed from service and by different but similar orders of the same date namely 6.4.1992 the appellate authority had rejected their appeals. The Tribunal had allowed the two applications by quashing the appellate authority's orders dated 6.4.1992 and directing him to reconsider the appeals. The appellate authority was also directed to pass a speaking order after affording the applicants a personal hearing. In the present O.As 712/94 and 759/94, the applicants have impugned the orders passed by the appellate authority dated 11.2.1994 in pursuance of the Tribunal's order dated 9.7.1993.

7. In the case of Pramod Kumar (OA 1670/92), the impugned order of the appellate authority is also dated 6.4.1992 and is more or less couched in the same language and passed by the DRM-MB. There is no doubt that the appellate authority's order is not a speaking order and has not taken into account the grounds taken by the applicant in the appeal. Therefore, for the reasons given in the Tribunal's order dated 9.7.1993 in the aforesaid two cases, the appellate authority's order is liable to be quashed and set aside with similar directions as were given therein to pass a speaking order in accordance with the extant rules. However, before doing so since the case of Pramod Kumar (O.A. 1670/92) has been heard along with

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On the other two cases in which the appellate authority has already passed an order in pursuance of the Tribunal's order dated 9.7.1993, we shall also deal with the grounds taken by the learned counsel in Pramod Kumar's case.

3. Regarding the first point taken by the learned counsel for the applicant that the common proceedings had not been properly held, it is seen from the order passed by the appellate authority dated 11.2.1994 in pursuance of the directions given by the Tribunal in O.A. 1672/92 and O.A.1673/92 that the appellate authority has after discussing the facts and circumstances of the case come to the conclusion that the inquiry proceedings cannot be deemed to be combined/common but have been held together for the sake of convenience of the applicants and their common defence helper to which they had not objected. We do not find this conclusion either arbitrary or unreasonable in the circumstances of the case to warrant any interference.

4. Regarding the second point taken by the learned counsel for the applicant, we find that similar charges and findings have been given in the case of the other two applicants and considered in the appellate authority's order. It has been stated that the penalty imposed is not on the heavier side in the light of the charges which stand initially proved. We do not think that this conclusion can be faulted as even on the part of the charge which has been held proved by the Inquiry Officer, i.e. finding of guilt of charge for securing

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employment by producing a fake casual labour card, the penalty cannot be held to be disproportionate or severe which calls for interference.

10. Regarding the 3rd ground taken by the applicant, we find that the applicant has filed an appeal against this very order No. 727-E-D&R dated 15.1.1992 (Annexure A-22) and in the circumstances we find this ground is baseless and is accordingly rejected.

11. Regarding the 4th point that the disciplinary authority's order is not a speaking order, we would have normally quashed this order and remitted the case to the appellate authority for passing a speaking order as has been done by the Tribunal in the order dated 9.7.1993 in the other two cases. However, in the facts and circumstances of these three cases, we refrain from doing so in Pramod Kumar's case as we have dealt with these cases together and have, therefore, had the opportunity to see the subsequent order passed by the appellate authority dated 11.2.1994, in pursuance of the Tribunal's order dated 9.7.1993.

12. Lastly, it was urged that the Vigilance Investigation report had not been supplied to the applicant in accordance with the Railway Board's Circular dated 24.8.1968, referred to above. In the appeal the applicant did not appear to have taken this ground and in the circumstances of the case, he has also failed to establish how this omission has caused any prejudice to him. In the Railway Board's Circular dated 24.8.1968, it has been stated that ordinarily even a reference to what

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is contained in these reports should not be made in the statement of allegations. It has been explained that it is necessary to strictly avoid any reference to such reports in the statement of allegations, as, if any reference is made, it would not be possible to deny access to these reports and giving access to these reports will not be in public interest. Since the applicant himself did not appear to have called for these reports at the time of the inquiry, and no prejudice has been caused, we do not find this ground alone is sufficient to quash the disciplinary proceedings at this stage. (See **State Bank of Patiala Vs. S.K. Sharma** (JT 1996(3) SC 722). We are satisfied that the applicants have been given reasonable opportunity to defend their cases and the principles of natural justice have been complied with. We have also carefully considered the other arguments of the learned counsel for the applicants but do not find merit to warrant interference in their cases. In the facts and circumstances of the case, we find no justification in interfering with these impugned orders or any purpose will be served ~~by~~ remitting the case to the appellate authority to pass a speaking order as the case is fully covered by the subsequent orders passed by the appellate authority in the other two cases.

13. In the result, these applications (O.A. 1670/92, 712/94 and 759/94) fail and are dismissed. No order as to costs.

Let a copy of this order be placed in the other two cases.

Lakshmi
(Smt. Lakshmi Swaminathan)
Member (J)

Adige
(S.R. Adige)
Vice Chairman (A)

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