

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA. No. 2085/92

Dated this the 28th Day of April, 1995.

Shri N.V. Krishnan, Hon. Vice Chairman(A)
Dr. A. Vedavalli, Hon. Member(J)

Shri Hari Krishan,
S/o Shri Rikhi Ram,
R/o Village Daulatpur,
P.O. Saran,
Tehsil Jagadhri.

...Applicant

(Advocate: Ms. Asha Jain Madan)

versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. General Manager,
Northern Railway,
Baroda House,
New Delhi.

...Respondents

(Advocate: Shri R.L. Dhawan)

O R D E R
(By Dr. A. Vedavalli)

The facts of this case briefly are that the applicant was appointed as Substitute Loco Cleaner in the Railways on 12.9.79. His services were terminated on 13.9.90 on the ground that he had given a false claim on working as a casual labourer during the period 1.11.76 to 5.5.77. He filed a suit in the Court of IInd Additional Munsif, Ghaziabad in 1981. The suit was decreed by the judgement dated 5.10.81 in his favour and he was reinstated in service. Thereafter, the respondents on 2.10.82 served a charge sheet on the applicant alleging that he had secured employment by submitting a forged casual labour card. After holding enquiry, wherein the applicant had participated, he was removed from service by an order dated 18.8.83/30.9.83 (vide Annexure A). The said order reads as under:-

AB

"1. I have carefully considered the report of DAR enquiry held in this case, copy of which is enclosed.

1.1. I do not find any reason to disagree with the conclusion reached in DAR enquiry report by the learned Enquiry authority for reason recorded in the attached report.

1.2. I therefore hold you guilty of charges for submitting a forged casual labour card to get appointment as Sub Loco cleaner and have decided to impose upon you the penalty of removal from service. You are therefore removed from service with immediate effect.

2. Under rule 18 of the Rly Service DAR rules, 1968, an appeal against these orders lie and DEM (P) I provided;

- i) An appeal is submitted within 45 days from the date you receive the orders and
- ii) The appeal does not contain improper or disrespectful language.

Please acknowledge receipt of this letter."

2. The applicant preferred an appeal. It was rejected by a non-speaking order dated 13/19.10.83 (vide Annexure-B) which is extracted below:-

"Please inform the above named that his appeal has been considered by the Competent authority and the orders of removal from service by AME stand good."

3. The applicant challenged the validity of the aforesaid orders dated 18.8.83/30.9.83 and 13/19.10.83 before this Tribunal in TA.1162/85/CWP.No.1713/85.

4. This Tribunal by its order dated 22.5.90 (vide Annexure-D) held inter alia that:

"8. On careful consideration, we are of the opinion that there was some evidence to sustain the charge brought against the petitioner in the disciplinary proceedings initiated against him. In such a case, it will not be appropriate for this Tribunal to interfere with the findings of the Enquiry Officer and the decision of the disciplinary authority. We are also not impressed by the plea of the petitioner that the documents on the basis of which the charges were sustained, were forged documents.



9. There is, however, merit in the contention of the petitioner that the appellate order dated 19.10.83 is a non-speaking order. The appellate order reads as under:-

"Please inform the above named that his appeal has been considered by the competent authority and the orders of removal from service by AME stand good".

10. The Supreme Court has observed that the orders made by the appellate authority must contain reasons for the conclusion reached. In *Ram Chander v. Union of India*, AIR 1986 SC 1173, the Supreme Court has held that where the rules require the appellate authority to "consider" the matter, it meant an objective consideration by due application of mind which implies the giving of reasons for the decision (see also *R.P.Bhatt v. Union of India*, AIR 1986 SC 1040).

11. In view of the aforesaid legal position, we are unable to uphold the validity of the appellate order which does not give reasons for the decision. We, therefore, remit the case to the appellate authority to consider the appeal preferred by the petitioner afresh in terms of the Railway Servants (Discipline & Appeal Rules, 1968 and pass a speaking order as early as possible but not later than three months from the date of receipt of a copy of this order. In case, the petitioner feels aggrieved by the decision given by the appellate authority, he will be at liberty to file a fresh application in accordance with law, if so advised. The petition is disposed of accordingly. The parties will bear their respective costs."

5. Thereafter the appellate authority passed an order dated 20.9.91 (vide Annexure-E), which read under:-

In reference to the above orders of CAT/New Delhi your appeal dated 05.6.90 received in this office on 12.8.91 has been considered by Divisional Mechanical Engineer(OP)/Ambala Cantt. After going through the details of your D&AE case No.727-E/23/10020/P-S/ Dt. 20.10.82 and Enquiry Report conducted and submitted by FI/SRE vide his letter O/FI-SRE (D&AR)/Dt. 05.7.1983, Divl.Mech.Engineer(OP)/ Ambala Cantt has passed the following orders:-

"On the basis of enquiry report and its findings, the following speaking orders are passed:-

The enquiry report accepted and the charges proved as correct. The employee got the employment by fraudulent means and concealment of the facts. The employee neither worked with the Railways as Casual Labour for 176 days as mentioned in the report (from 1.11.76 to 03.05.79) the basic requirement of appointment and nor appointed on sport quota, as admitted by the employee. He did not produce any sports certificate for his participation at District or State level during his School, and neither recommended by Railway Sports Officer the sole authority for recommendations of absorption in the Railway appointment on sports quota.

In view of the above facts and unfair means and forgery adopted in getting employment, the appeal has been considered and the orders of removal passed by AME/New Delhi stand good.

NOTE:- For any further querry on the subject you may contact Sr.DPO/DRM Office/New Delhi as your case is being returned to Delhi Division."

6. In respect of the appellate order, the applicant filed CCP 308/91 alleging ~~attempt~~ of the Tribunal's order dated 22.5.90. The complaint was that though the Tribunal's order dated 22.5.90 required the appellate authority to pass a speaking order, this has not been done and that the appellate order is no different from the first appellate order dated 13/19.10.93, which was not upheld by the Tribunal.

7. The CCP was disposed of by the order dated 14.2.92 (Annexure-F). The earlier order of the appellate authority dated 19.10.83 and the subsequent order of the appellate authority dated 29.9.91 have been considered by the Tribunal. *Inter alia*, it was held by the Tribunal thus:-

"A bare comparison of the earlier and the present order shows that they are not identical.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
In our opinion, a speaking order has been made and, therefore, it is not a matter on

which we should express any opinion on merits. We leave it to the petitioner to agitate the matter in the appropriate proceedings. We do not consider this is a fit case to take action under the Contempt of Courts Act. Hence, the Contempt of Courts proceedings are dropped."

8. It is, therefore, that the OA has been filed seeking the following reliefs:

(a) quash the enquiry report dated 5.7.1983 of trial inspector order dated 18.8.1983/ 30.9.1983 (termination order) 20.9.1991 (of appellate authority) as illegal and untravires of article 14 and 16 of the Constitution of India.

(b) direct the respondents to appoint the applicant to the original post with full back wages and other consequential benefits;

9. It is contended that the charge is false. There was no evidence to prove the charge. The appellate order is challenged on the ground that no reason have been given and that it is passed beyond the period of three months given by the Tribunal.

10. The respondents in their counter reply have denied the allegations made by the applicant in his application and have submitted that the impugned termination order and appellate authority's order are perfectly legal. They have prayed for dismissal of the application with costs.

11. We have heard the learned counsel for both parties and perused the documents on record.

12. Regarding the question whether there was any evidence to substantiate the charges brought against the applicant in the disciplinary proceedings initiated against him, this Tribunal's views and findings in the earlier order dated 22.5.90 (vide

by

(20)

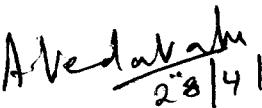
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Annexure-D) have already been given in para-8 of the said order extracted in para-4 supra. That being the case, the same issue cannot be agitated in the present OA. The bar of res judicata will operate.

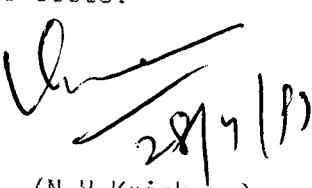
13. The other question whether the impugned order of the appellate authority dated 30.9.91 (vide Annexure-E) is non-speaking and contemptuous of this Tribunal's earlier order dated 22.5.90 (vide Annexure-D), has also been dealt with by this Tribunal earlier in its order dated 14.2.92 (vide Annexure-F) while disposing of CCP.308/91, extracts of which are reproduced at para-7 supra. It has been held that a **speaking** order has been passed. No contempt was established.

14. It is clear from the foregoing discussion that the grievances raised by the applicant in the present OA have already been considered and disposed of by this Tribunal in its earlier orders dated 22.5.90 and 14.2.92 (vide annexures D & F respectively).

15. Therefore, the present application is devoid of merit and is dismissed. No order as to costs.


28/4/95
(Dr. A. Vedavalli)
Member(J)

/kam/


28/4/95
(N.V. Krishnan)
Vice Chairman(A)