

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.926/92

NEW DELHI, THE 18th DAY OF MARCH, 1994

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Surinder Kumar
S/o Shri Dhyan Singh
Substitute Loco Cleaner
Under Loco Foreman
Moradabad Applicant

BY ADVOCATE SHRI B.S.MAINEE.

VS.

Union of India through

1. The General Manager,
Northern Railway
Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Moradabad.

... Respondents

BY ADVOCATE SHRI RAJESH

ORDER

JUSTICE S.K.DHAON:

The applicant, a Substitute Loco Cleaner was served with a memorandum of charge-sheet dated 13.2.1991 with the allegation that he had managed to secure employment as Substitute Loco Cleaner by showing that he had worked under SM/DAN during 1.12.79 to 11.12.79 while he could not have been employed on 1.12.79 without prior approval of DRM which is wanting. On 4.3.1991, he furnished his reply in which he asked for supply of the copies of certain documents. According to the applicant, a preliminary enquiry was got conducted through the Traffic Inspector, Bareilly. It is alleged that the Traffic Inspector gave a report in applicant's favour. The inquiry officer submitted his report. He exonerated the applicant.

2. On 5.3.1992, Assistant Mechanical Engineer Northern Railway, Moradabad issued a communication to the applicant calling upon him to give his explanation of the two reasons given by him (Assistant Mechanical Engineer) for disagreeing with the report of the inquiry officer. A copy of the report was supplied to the applicant along with the said communication. The applicant gave his reply but before any order could be passed by the disciplinary authority, he came up to this Tribunal with the allegation that he had every reason to believe that the disciplinary authority had made up his mind to pass an order adverse to him(the applicant). The prayer is that the proceedings may be quashed.

3. On 6.4.1992, this Tribunal passed an interim order directing the respondents not to pass the final order pursuant to the show cause notice dated 5.3.1992. That order continues to operate even now.

4. One of the contentions raised in this OA is that the applicant could not be subjected to disciplinary proceedings with respect to the charge aforementioned. It is contended that since ^{was not} the alleged misconduct/ committed by the applicant during the course of his employment as a railway servant, Rule 3 of the Railway Services(Conduct) Rules,1966 has no application to the facts of this case. By our judgement dated 18.3.1994 in OA No.3050/91 and other OAs, we have held that the authority concerned has the jurisdiction to initiate proceedings under Rule 3 of the aforesaid Rules even with respect to the charge that a railway servant has procured his employment by making a misrepresentation that he was employed in the railways earlier as a casual worker. For

the reasons given in that judgement, we repel the contention of the applicant on this point.

5. Having considered the matter, we are of the opinion that this is not a fit case for our interference at this stage. The applicant approached this Tribunal pre-maturely. He did not give any chance to the disciplinary authority to pass any final order. We have no doubt that the disciplinary authority shall have due regard to the explanation offered by the applicant as to why it(the disciplinary authority) should not differ from the recommendations of the inquiry officer. We have also no doubt that the disciplinary authority shall bear in mind the fact that as alleged by the applicant the Traffic Inspector had exonerated him(the applicant) in the preliminary enquiry. It goes without saying that if the decision of the disciplinary authority goes against the applicant, it will be open to him to prefer an appeal before the relevant appellate authority. Thereafter, he will be at liberty to approach this Tribunal with a fresh OA. In that OA he will be free to raise all permissible pleas.

6. With these observations, this OA is dismissed. There shall be no order as to costs.

B.N.DHUNDIYAL
(B.N.DHUNDIYAL)
MEMBER(A)

SNS

S.K.DHAON
(S.K.DHAON)
VICE-CHAIRMAN(J)