

Central Administrative Tribunal
Principal Bench

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O.A. No. 944/1992

22nd
New Delhi, this the / Day of August, 1995.

Hon'ble Shri J.P. Sharma, Member (Judicial)
Hon'ble Shri B.K. Singh, Member (Administrative)

Shri Azim Ullah,
s/o Shri Ali Baksh,
Ex-Substitute Loco Cleaner,
Under Loco Foreman,
Northern Railway,
Moradabad.

Presently &

C/o Shri Nasim Khan
C/o Shri Nathu Singh
H.No. 51, Krishna Kunj,
Laxmi Nagar,
Delhi- 92.

Applicant.

(By Shri B.S. Mainee, Advocate)

Versus

Union of India through:

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

... Respondents

(By Shri Rajesh, Advocate)

ORDER

(delivered by Hon'ble Shri J.P. Sharma, Member (J))

The applicant on the basis of showing his engagement as a casual labourer with the Station Master, Safipur and Station Master, Mallawah in Moradabad in the year 1978, 1979 and 1982 was given an appointment on the basis of

16

appointment letter dated 15.6.1988 as a substitute loco cleaner in the grade of Rs. 750-940/- and was posted under Loco Foreman, Moradabad. The applicant, however, was served with a major penalty chargesheet dated 13th October, 1989 on the basis of misconduct alleged against him that he got engagement as a substitute loco cleaner by producing working certificates issued by the Station Master, Safipur and Station Master Malh wah. On the basis of an enquiry, which was conducted by DPI Moradabad revealing that the applicant had not worked during the aforesaid period and he submitted forged working certificates and as such violated rule 3(1) (ii) & (iii) of the Railway Servants Conduct Rules, 1956. The applicant was also placed under suspension w.e.f. 28th May, 1990. Shri M.L. Bajpai, Loco Inspector was appointed as Enquiry Officer and conducted the enquiry. On the basis of the enquiry officer's report the disciplinary authority passed an order dated 10/9/1991 imposing the punishment of removal from service. The applicant preferred an appeal against the aforesaid order dated 15.1.1992 and the same was also dismissed. In this application, the applicant has challenged both the orders and he has prayed for the grant of the reliefs that both the orders of punishment be quashed and respondents be directed to re-instate the applicant in service with back wages and with consequential benefits.

The respondents contested this application and

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stated that the applicant lost the confidence of the respondents as he sought employment with the respondents on the basis of false and bogus documents and those documents were got prepared by legal means as on verification they were found to have been obtained in collusion with certain persons. Verification, filed by the applicant was on the basis of collusion with Inspector and the Inspector has already been charge-sheeted for the same. The Senior Welfare Inspector, therefore, issued a false certificates in favour of the applicant and on that basis the applicant cannot assert the claim. The applicant was given the help of defence helper but he himself did not cooperate in the enquiry. The witnesses Shri D.C.Dixit and Shri N.N.Upadhyay were examined but the applicant was /
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opport/ for the cross examination. The name of the applicant was not existing in the live casual register and he was overage on 31st October, 1987. The applicant was afforded full facilities and thereafter the disciplinary authority passed the impugned order.

We heard the learned counsel for the applicant Shri B.S.Mainee and Shri Rajesh for the respondents and also perused the departmental enquiry file. The charge against the applicant in the departmental enquiry has been that he got engagement as substitute loco cleaner by producing working certificates that he worked from 7.5.1978 to 28th August, 1978 i.e. for 17 days and thereafter from 10th May 1979 to 31st August, 1979 i.e. for 123 days under Station Master Safipur and from 9.5.82 to 30.6.82

9

i.e. for 9 days under Station Master, Mallawah.

The Enquiry Officer recorded the statement on 19/4/1990 of Laxmi Narain Station Master Safipur and Shri D.C. Dixit officiating Station Master at Mallawah.

The Enquiry Officer Shri M.L. Bajpai, Loco Inspector, Roja submitted the inquiry report dated 28.8.90 on the basis of an enquiry and on the basis of statements of Shri Bramanand and Shri S.C. Pandey held the charge is established against the applicant and the certificates of having worked done are forged and that the delinquent could not establish that this certificate is genuine. This report was submitted by the Enquiry Officer but the office of the Divisional Railway Manager, Moradabad returned the enquiry report to Shri M.L. Bajpai, Loco Inspector that there are certain deficiencies in the said report and that after obtaining the said file from the Yantrik Sakha and after contacting the Assistant Yantrik Engineer first removed the deficiency and after completing the enquiry again submitted the report. Here it may be recalled that the forged certificates are alleged to have been issued by Shri Brahmanand under his signatures as well as by Shri S.C. Pandey, Station Masters, Safipur and Mallawah stations, Northern Railway

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respectively. While there was a report by the respective Station Masters that the applicant never worked during the period shown in the certificate at Safipur and Mallawah stations. submitting an earlier report of It appears that after this enquiry, the Enquiry Officer commenced the enquiry and again submitted the report on 9.4.91. The enquiry was fixed on 22.1.91, 12.3.91 and 4.4.91 but the delinquent did not associate with the enquiry for one reason or the other. The Enquiry Officer has drawn the conclusion that full facilities were awarded to the delinquent and it was submitted for exparte action against the delinquent. It appears that after the submission of the report in August, 1990 the Enquiry Officer has called both the witnesses Shri Brahamanand, Station Master as well as Shri S.P. Pandey under whose signatures the alleged certificates appear to have been issued. The Enquiry Officer has given due intimation to the delinquent Azim Ullah as well as to his defence assistant. On 12.3.91 Shri Brahmanand was examined but the delinquent or his defence helper did not turn up, so the statement was recorded. Earlier the Enquiry Officer has taken the statement of Shri D.C. Dixit, Acting

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Station Master, Mallawah on 19.4.90 and on the same date the statement of Laxmi Narain Upadhyay, Station Master. On 17.7.90 Shri S.P. Pandey from Headquarters HRI at BLM has informed that he has not signed the certificate given to Shri Azim Ullah as for his working days as Hot Weather Water Man at Mallanwan and that he also do not recognise him and signature on the certificate has not been put by him. The delinquent was given due opportunity to cross-examine on such facts when the statements of S/Shri D.C. Dixit and Laxmi Narain were recorded and the applicant did not choose to cross-examine Shri Brahmanand when he was examined on 12.3.91.

The learned counsel for the applicant argued that the procedure adopted by the Enquiry Officer is faulty and the Enquiry Officer was biased. The learned counsel for the applicant has referred to the number of authorities and the latest is 1994 (Registrar of cooperative Societies, Vs. F.X. reported in SLJ(2) SC 124; From the facts and Fernando) circumstances of the case, we find that the applicant on one pretext or the other wanted to delay the enquiry proceedings and never desired that this should be concluded. From the evidence on record we find that the Enquiry Officer has given due

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opportunity to the applicant and the competent authority has considered the representation regarding the alleged prejudicial attitude of the Enquiry Officer Shri Bajpai and did not find favour with the allegations levelled against the Enquiry Officer. 3 times the applicant has changed his defence assistant and he was accommodated to the last. There was no personal enmity with the delinquent and he was never associated with the work of the applicant earlier. The only fact to be established was that the applicant has procured an engagement by filing certificates of having worked earlier in the railways and on enquiry it was found that the signatures on those certificates by the Station Masters of Safipur and Mallawah were not genuine and have been forged. This fact has been testified in writing by the signatories of those certificates. The applicant wanted adjournment time and again. He was free to move to the expert authorities for identification of the signatures and inspite of defence helper who appears to be a trained person, this was not opted and the applicant has given in writing that he has been given due opportunity to defend his case. Thus, there is no element of bias against the Enquiry Officer.



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The learned counsel for the applicant argued that the delinquent was examined first and his statement was taken. In fact certain questions were put to the delinquent and he has answered them relating to the fact, whether the charge framed against him is admitted to him or not, as there was a documentary evidence furnished to the applicant also showing that the signatures on the certificates ^{of the signatory Station Masters} are forged and not of the Station Masters whose signatures are said to be on those certificates. Thus, there is no irregularity committed by the Enquiry Officer and even thereafter as the witnesses have been examined.

The further contention of the learned counsel for the applicant is that the witnesses were examined in the absence of the applicant after the case was remanded by the disciplinary authority. We find that the applicant was informed time and again and adequate opportunity was given to him and ultimately the Enquiry Officer has written to the disciplinary authority that exparte action be taken against the applicant and he has submitted supplementary report to his earlier report of August, 1990.

The learned counsel for the applicant could not show that what were the reasons which prevented

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the applicant in associating with the enquiry, the misconduct alleged only was of forging signatures on certificates. This fact can be established only by calling those persons who signed the same and the administration has examined those persons then the burden shifted on the applicant to show that the signatures are on the alleged forged certificates of the Station Masters Shri S.P. Panedy and Brahmanand. The applicant has not discharged his burden. The Enquiry Officer, therefore, on the basis of facts has drawn inference.

The learned counsel also pointed out that the appellate authority did not apply its mind and though the applicant has filed a detailed appeal but the appeal has been disposed of by the Appellate authority by a brief order of one sentence. The disciplinary authority need not have given any reason and he has agreed with the finding of the Enquiry Officer report and that he was not associating with the enquiry which shows his guiltiness and thereby he imposed a punishment of removal from the service as an exparte action on the basis of charge already communicated to the applicant. However, the Appellate authority passed the brief order "I have carefully gone through the appeal of Shri Azim Ullah. I find nothing in appeal which can prove the period of service shown in the C.L. Card was actually served

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by him. I reject the appeal." This order was conveyed to the delinquent on 15.1.92. It is expected that the Appellate authority after amendment in the provisions of Article 311 where no double opportunities have been afforded to the delinquent, the Appellate authority should have applied its mind. The learned counsel for the applicant has relied on a decision of the Principal Bench in the case of Jarnail Singh Vs. The General Manager, N. Railway, New Delhi reported in 1995(2) ATJ 36. In this judgement of the Principal Bench the case of UOI Vs. Ram Chander was relied upon where the Hon'ble Supreme Court has held that the consideration by the Appellate authority should be objective and there should be due application of mind. The order should not be passed mechanically and it should be ^a speaking order. The present order is very cryptic order and does not consider the various points raised in the memo. of appeal preferred by the delinquent. Thus, the Appellate authority's order has to be quashed. The learned counsel for the applicant on the basis of the ratio of Jarnail Singh case desired that the matter should not be remanded to the Appellate authority as was done in the reported case. However, the facts in this case are different. The evidence by the Enquiry Officer

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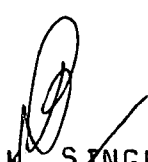
has already been recorded and the applicant has been given due opportunity to defend himself at various stages even after remand by the disciplinary authority where it was directed that the deficiency in the enquiry be removed. The delinquent has been informed time and again with regard to that facts. The same has not been complied with by the delinquent. He has himself to suffer. Thus this is a fit case where the Appellate order only is to be quashed and the case is sent back to the Appellate authority to pass a detailed order after considering the memo. of appeal in objective manner and in that way any observation made in the judgement will not come in the way of Appellate authority. He is free to take his own view in the matter in the circumstances of the case and he may at the appellate stage himself give an opportunity to cross-examine the witnesses which the applicant did not cross-examine by not associating in the enquiry. It is open to the appellate authority to consider every aspect objectively. The appellate authority, therefore, consider the appeal and pass the speaking order in that direction.

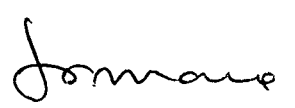
The application is, therefore, partly allowed and the case is remanded to the Appellate authority to decide the appeal of the applicant by ^a speaking order

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in the light of the observation made in the body of the judgement after giving a personal hearing to the delinquent and also considering his request, if any, for cross-examining any of the witnesses examined in his absence. In the circumstances, the parties are directed to bear their own cost. The Appellate authority to conclude the proceedings of the appellate stage expeditiously preferably within a period of six months from the date of receipt of copy of this order.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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