

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1125/92

Hon'ble Mr. Justice K.M.Agarwal, Chairman
Hon'ble Sh. R.K. Ahooja, Member (A)

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New Delhi, this the 21st day of February, 1998

Shri Bholay Shankar Tewari
s/o Shri Jaggan Lal Tewari
ex. Substitute Loco Cleaner
under Loco Foreman
Northern Railway
Moradabad.
c/o Shri B.S.Mainee
Advocate
240 Jagriti Enclave
Delhi - 110 092.

... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A):

The applicant while working as a Substitute Loco-cleaner was chargesheeted for a major penalty vide Standard Form No.5, Annexure-A4, dated 23.8.1991. It was alleged therein that the applicant had committed misconduct inasmuch as he had secured employment by furnishing a fake casual labour service certificate from SM/ATKS and a certificate from SM/DLP issued by Shri S.M.Agarwal without support of the records. It was also alleged that the applicant colluded with the staff of Personnel Branch and secured employment although he had worked only 116 days against the prescribed 120 days. On the basis of enquiry the applicant was dismissed from service vide order, Annexure-A1, dated 23.8.1991. His appeal dated 21.10.1991 was

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also rejected vide order dated 15.1.1992, Annexure-A2. It is aggrieved by these two orders that the applicant has come before this Tribunal. 16

2. The applicant has adduced various grounds to assail the impugned orders of dismissal. These include the allegation that the key witness Shri M.K. Agarwal had not been produced, that the relevant records including muster roll, pay vouchers were also not produced, during the enquiry, that the material produced was not sufficient for the conclusion of the enquiry officer, that the copy of the enquiry report was not given to him to enable him to make proper representation before the final order was passed and that both the orders of the disciplinary authority as well as appellate order are non-speaking orders. The respondents in reply have denied the allegations of the applicant.

3. We have heard the counsel on both sides and have also perused the written submissions. We do not consider it necessary to go into the various detailed arguments advanced by the counsel since we find that on the face of it the impugned orders suffer from a ~~genuine~~ short coming which in itself is sufficient for quashing both the orders. It would be seen that the impugned order, Annexure-A1 dated 23.8.1991 is in the following terms:

"I have carefully considered your representation dated 26.4.1991 in reply to the Memorandum. I do not find your representation to be satisfactory due to the following reasons:-

That you committed misconduct/misbehavior as made as you secured employment by furnishing the fake casual labour certificate of SM/ATKS and SM/DLP.

I, therefore, hold you guilty of the charge(s) viz mentioned in SF-5 levelled against you and have decided to impose upon you the penalty of dismissal from service. You are, therefore, dismissed from service with immediate effect."

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4. We find that the Memorandum to which reference has been made above was in fact the memorandum in response to the charge-sheet and not in response to the Enquiry Report, which was never given to the applicant. It has been held by this Tribunal in a number of cases that non-speaking orders exhibit an undisclosed discretion of the disciplinary and appellate authorities. The judicial and quasi judicial orders have to be speaking orders so that the affected employee not only knows the reason for the conclusion of the authority but is able to meet the case against him before the appellate authority. The Apex Court has also in the case of Shri S.N.Mukherjee Vs. Union of India, 1991 (1) SLJ(1) observed as follows:

"Except in cases where the judgment has been dispensed with expressly or impliedly and recording of reasons is necessary, an administrative authority exercising judicial or quasi-judicial functions is required to record its reasons for its decision."

5. The order of disciplinary authority we find here is absolutely cryptic and gives no reason whatsoever for the conclusion arrived at. To say that dismissal is because of the fake certificate is merely to repeat the charge. No grounds whatsoever for arriving at the conclusions have been given. The affected employee is thus totally left in the dark without a clue as to the case against him. This omission of the disciplinary authority is further compounded by the fact that a copy of the enquiry report was admittedly not given to the charged employee before the final orders were passed. The respondents say that this in itself is not a fatal omission in view of Supreme Court's Judgment in S.K.Singh Vs. Central Bank of India, JT 1996(9) SC 542 in which it was held that the employee has to satisfy the court that prejudice has been caused to him by the non supply of the enquiry report. In our view when neither a copy of the enquiry report has been given to the charged employee nor the final order gives any reason for the conclusion reached, the

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conduct of the disciplinary authority becomes totally prejudicial to the fairness of the disciplinary proceedings itself. The impugned order is therefore to be quashed in short order. We order accordingly.

6. In the normal course our directions would have been to the respondents to reinstate the applicant with liberty to take departmental enquiry from the stage of supply of a copy of the enquiry report. However, as was held in a similar case Shri Ram Saran Lal Vs. Union of India & Others (OA No.1844/92, decided on 9.5.1997) since there has been an inordinate delay in disposal of this OA, for no fault on the part of the applicant, it would not be just or expedient to direct a fresh enquiry from the stage of supply of a copy of enquiry report. In the case of Ram Saran Lal (Supra) reinstatement was directed but without entitlement to claim back wages for the period between the date of dismissal to the date of reinstatement. It was also directed that the applicant would not be entitled to any seniority, etc. because in the mean time many persons might have been promoted and if the seniority of the applicant is directed to be restored, it is likely to create unnecessary problems and hardship to other employees who are not before us. Considering that period of six years has elapsed since the dismissal of the applicant, we feel that in the interest of justice the same directions could be given in the present case.

7. We accordingly allow the OA and quash the impugned orders. The applicant would be reinstated but would not be entitled to claim any back wages or seniority on the basis of the

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intervening period. The respondents will comply with this direction within a period of one month from the date of receipt of a copy of this order. No costs.

Km
(K.M. AGARWAL)
CHAIRMAN

Rk
(R.K. AHOOJA)
MEMBER (A)

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