

Central Administrative Tribunal
Principal Bench

(11)

O.A. No. 1193 of 1993

New Delhi, dated this the 20 September 1999

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

Shri Chander Bhal,
S/o Shri Subedar,
Ex-Substitute Loco Cleaner
under Loco Foreman,
Northern Railway,
Moradabad, U.P. Applicant
(By Advocate: Shri B.S. Mainee)

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 Advocate: Shri R.P. Aggarwal)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 2.7.92 (Annexure A-1) dismissing him from service.

2. Applicant was proceeded against departmentally on the charge (Annexure A-1) that he secured employment as Substitute Loco Cleaner LF/Moradabad by showing that he had worked under IOW, Balamau during 9.8.77 to 14.4.82 which was not supported by any valid document as the signature on the certificate given by IOW, Balamau was found to be forged. The Inquiry Officer in his findings (Annexure A-5) held the charge to be proved.

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✓ A copy of the I.O's report was furnished to applicant vide letter dated 16.6.92 (Annexure A-5). Applicant submitted his representation, on receipt of which the disciplinary authority after considering the same, issued impugned order dated 2.7.92. Applicant filed an appeal on 12.8.92 but asserts that as the same was not disposed of within six months filed this O.A. on 18.5.93. Meanwhile respondents rejected applicant's appeal on 13.11.92 (Annexure R-2) which applicant has not impugned. Applicant also did not avail of the statutory remedy available to him of filing a revision petition under Rule 29 Railway Servants (Discipline and Appeal) Rules, 1968.

3. The main grounds taken by applicant's counsel Shri Maine are that the relevant documents including the casual labour register, the muster roll and the paid vouchers for the relevant period were not produced. He has also contended that Shri B.K.Das was not summoned despite request, and the evidence of shri H.O. Agarwal who appeared as a defence witness was disregarded.

4. In so far as the non-production of documents, and the non-summoning of Shri B.K. Das are concerned, applicant has not taken these grounds in his appeal dated 12.8.92 (Annexure A-6) nor indeed in the Para 5 of the O.A. containing the grounds for relief, and this is clearly an after thought. In regard to the evidence of Shri H.O. Agarwal, it is

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true that he has said that the signature on the casual labour card appeared to be that of Shri S.P.Julka, IOW, Balamau, but Shri Julka himself who was PW-1 has denied that the signature on the casual labour card was his. This statement was made on 2.2.92 in the presence of applicant, as is clear from the I.O's report, and there is nothing to establish that this statement has been shaken in cross-examination.

5. Under the circumstances, if the I.O. has believed the statement of PW-1 Shri Julka and disbelieved the statements of DW's S/Shri Lakshmi Narain and H.O. Agarwal, it cannot be said that such a conclusion necessarily is illegal or arbitrary. The Tribunal in exercise of its power of judicial review is not acting as a Court of appeal and cannot reappreciate the evidence. In the light of Shri Julka's statement denying the signature on the Casual Labour Card to be his, it also cannot be said to be a case of no evidence, more particularly in the absence of materials furnished by applicant to establish that Shri Julka's testimony was motivated and tainted.

6. In this connection the Hon'ble Supreme Court in Union of India & Others Vs. Upendra Singh (1994) 27 ATC 200 has defined the following parameters in the exercise of the powers of judicial review by Courts/Tribunals.

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"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself". (74)

7. Applicant has not complained that he was not given fair treatment in the sense that he was not given a full opportunity of being heard, to put forward his defence.

8. Under the circumstances, we find no good grounds to interfere in this matter. The O.A. is dismissed. No costs.



(Mrs. Lakshmi Swaminathan)
Member (J)



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

/GK/