CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1926/93

New Delhi this the 19th day of July, 1999.

Hon'ble Sh. A.V. Haridasan, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Shri Nagesh Dixit,
S/o Sh. K.K. Dixit,
R/o H.No.201 Maujpur,
Shahdara, Delhi. .... Applicant

(through Sh. B.S. Mainee, advocate)

versus

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

2. The Divl. Railway Manager,
Northern Railway,
Moradabad. .... Respondents

(through Sh. R.P. Aggarwal, advocate)

ORDER(ORAL)
Hon'ble Shri S.P. Biswas, Member(A)

The applicant is aggrieved by A-1 and A-2 orders dated 4.1.93 & 7.4.93 respectively. By A-1 orders, he has been removed from the services of the Railways pursuant to findings in a major penalty proceeding initiated through servicing of the SF 5. By A-2 orders, the Appellate Authority has rejected the applicant's appeal against the order of removal as at A-1.

2. Background facts that would help appreciating the legal issues involved in this case are as hereunder. The applicant was initially engaged as a casual labour on 1.5.78 and was subsequently appointed as

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Loco Cleaner in June 1988 and continued to work in that capacity for quite some time. The applicant would claim that he had worked for more than 139 days as casual labour and was entitled for temporary status as per rules prevalent under the respondents railways.

3. The main plank of applicant's attack is that the enquiry is vitiated for the reason that the enquiry officer did not provide the facilities of examining the following material documents, namely:-

(i) Attendance Register(ii)Payment Voucher papers and
(iii) Live Casual Labour Register.

In the absence of such relevant records, the applicant could not substantiate his claim of having continued with the respondents for the periods as claimed by him.

4. The respondents, on the contrary, have denied the claims of the applicant on the ground that the inclusion of the applicant's name in the live casual labour register was a subsequent development. In other words, those entries were added later on maliciously by interested parties and that the applicant in connivance with other staff served appointed by illegal means on production of forged documents.

5. We have heard the learned counsel for both the parties and perused the records.

6. It is evident from the records that the applicant vide his letter dated 4.9.90 had asked for certain specific documents. The records do not show that those documents needed by the applicant were provided nor there is any explanation as to why those could not be supplied.

7. While going through the materials and evidences placed before us, we find that there are legal infirmities in dealing with this case and they relate to the orders of Disciplinary and Appellate Authorities as at A-1 and A-2. The orders of the Disciplinary Authority in the railways have to be issued following the instructions under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. That apart, under the instructions of the Railway Board in its orders dated 3.3.78 (E(D&A)78-RG-6-II, the order of the Disciplinary Authority must be based on examination of findings on each imputation of misconduct. The Railway Board's circular aforesaid has made it mandatory in the railways that Disciplinary Authority while imposing the major penalty must apply its mind to the facts, then record its finding on each imputation so as to show that it has applied its mind in the case. The reasons recorded by the Disciplinary Authority should be comprehensive enough to give a chance to the delinquent servant to explain his case in the appeal. The present A-1 order does not touch upon this legal requirement.

8. We are again constraint to mention that the consideration of the applicant's appeal has been contrary to the provisions of law laid down under Rule 22(2) of

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the Railway Servants (D&A) Rules, 1968. The details therein have not been followed in A-2 order. The relevant provisions that have not been followed are as under;-

> "Rule 22(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing penalty imposed under the said rule, the appellate authority shall
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> (a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
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> (i) confirming, enhancing, reducing or setting aside the penalty; or
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> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Because of the legal infirmities, the applicant's case deserves consideration on merits.,

9. In the result, the O.A. is allowed with the following directions:-

(a) Orders at A-1 and A-2 are set aside.

(b) The applicant shall be reinstated within a period of 3 months from the date of receipt of a copy of this order.

(c) Our orders above, however, shall not stand in the way of the respondents in initiating fresh actions against the applicant from the stage of enquiry report. The applicant, shall, however, be given all the relevant documents/opportunities to defend his case in case the respondents desire to hold further enquiry.

The O.A. is disposed of as such. No costs.

(S.P. Biswas)
Member(A)

(A.V. Haridasan)
Vice-Chairman(J)

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