

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.2438/93

New Delhi, this the 30th September, 1994

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

Hon'ble Shri B.K. Singh, Member (A)

Shri Sunil Kumar,
s/o Shri Shiv Kumar Sharma,
Ex-Substitute Loco Cleaner,
Under Locoforeman,
Northern Railway, Lakshar.

.... Applicant

By Shri B.S. Mainee, Advocate

Vs.

1. Union of India
through
The General Manager,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

.... Respondents

By Shri K.K. Patel, Advocate

ORDER

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

After producing the working certificate
with I.O.W., Chandausi, the applicant was appointed
as Substitute Loco Cleaner by the order dated 8.2.89.
Before giving appointment to the applicant as
Casual Labour/Substitute Cleaner the employing
supervisor was satisfied that the card produced
by the applicant is authentic. However, the applicant

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was issued a Memo. of chargesheet dated 9.4.91 that he got engagement as a Substitute Loco Cleaner that he has worked under IOW Chandausi during 15.7.78 to 14.11.78 while this fact was not supported by any valid document. This could not be verified due to non-availability of the record and therefore the working period of the applicant was wrongly asserted by him with IOW Chandausi. The Inquiry Officer was appointed. He gave his report to the disciplinary authority who by the order dated 19.3.93 imposed the punishment of removal from service. The applicant submitted an appeal to the appellate authority which was disposed of by rejection on 10.11.93. The applicant filed this application in November, 1993 and prayed for the grant of reliefs that the impugned punishment order be quashed and the applicant be reinstated in the service with back wages.

2. The Respondents contested this application. It is stated in the reply that the applicant failed to produce any ~~any~~ document that he was working as Casual Labour under IOW Chandausi. The documents which were produced by the applicant have been found to be forged after inquiry. He got irregular ^{order} appointment and the same was cancelled by removing the applicant from service.

3. The applicant has also filed the rejoinder and reiterated the same points ^{stated} in the application.

4. We heard the learned counsel of the parties and perused the departmental file also.

5. In the Chargesheet issued on 9.4.91 to the applicant, the article of charge is that the applicant managed to secure employment as

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Sub Loco Cleaner by showing that he has worked under IOW, Chandausi during 15.7.78 to 14.11.78 while it is not supported by any valid document. When required to re-verify his original working it could not be done for want of availability of the record. It is inferred that the original working commenced from 15.7.78 is forged. Thus, the applicant is said to have failed to maintain absolute integrity and contravened Rule 3.1(i) and 3(iii) of Railway Services Conduct Rule, 1966. The documentary evidence relied upon is letter of Asstt. Engineer, Najibabad dated 29.7.90. Among the list of witnesses only one witness Shri Chandra Pal Singh, Dealing Assistant, Assistant Engineer, Najibabad is mentioned. The applicant was also put under suspension earlier to this by the order dated 30.8.90. Shri L.N. Saluja was nominated as Inquiry Officer by the letter dated 6.1.92. By the letter dated 9.9.92, certain the applicant got/papers summoned to the Inquiry Officer which are Casual Labour register of IOW, Chandausi from 15.7.78 to 15.10.78, the casual labour record alongwith Live Casual Labour Register of IOW Najibabad and CPW, Najibabad, the personal file of the applicant having casual labour correspondence with IOW, Najibabad and the IOW Special, Chandausi who had signed the casual labour card. The request was made through the Defence Assistant. The Inquiry Officer examined Shri Sita Ram on 23.9.92, Shri Radhey Shyam on 28.9.92. Shri A.K. Ghosh(PW)- Najibabad also examined on 14.10.92. The applicant

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submitted his defence statement and the Inquiry Officer gave his finding and observed that the charges against the employee were of the nature that working days from 15.7.78 to 14.11.78 could not be verified by IOW Chandausi hence forged. The reasons for findings given by the Inquiry Officer are a copy of the casual labour card and the case file is not counter signed by any Gazetted Officer. Further the reason is that though the applicant has shown having worked for 353 days but there is a remark that from 15.7.78 to 14.11.78 - 92 days may be got further verified from the office of IOW, Chandausi, which have not been verified as yet. The Inquiry Officer concluded the findings that no casual labour record of IOW, Chandausi is available at this stage and that could not be verified. The ultimate finding is that after carefully going through the evidence, the Inquiry officer has come to the conclusion that the charges levelled against the applicant are true. The said finding is quoted below:

"After going through carefully with the evidences passed out during the proceedings and the documents available on the case file, I am of the opinion that the charges levelled against Shri Sunil Kumar, s/o Shiv Kumar, Cleaner/Loco Shed/Laksar are proved."

The disciplinary authority by the order dated 19.3.93 imposed the penalty of removal from the service with immediate effect. The applicant

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filed the appeal to the Senior Divisional Mechanical Engineer on 27.3.93 who passed the following order:

"I have gone through the entire case in reference to the appeal and conclude that the case has been dealt as per the rules and at no stage natural justice has been denied to the C.O."

The punishment imposed is adequate and certainly not heavy when seen in light of charge. I therefore regret to reject appeal of Shri Sunil Kumar."

6. Ordinarily the Tribunal has not to see and appreciate the evidence adduced before the Inquiry Officer. The Tribunal however, can see and judge whether there is any evidence on which the finding has been based by the Inquiry Officer and agreed to by the disciplinary authority. The report of the Inquiry Officer itself goes to show that the records for the period when the applicant has shown his engagement as casual worker with IDW Chandausi from July 1978 to November 1978 was not available. The charge against the applicant has been the working days for that particular period has not been verified and therefore these are forged. The applicant has been given appointment as Substitute Loco Cleaner under the Railway Board instructions contained in circular letter No.E(NG)II/84/CL/24 dated 24.9.87. There is a

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presumption of the fact that the official act has been performed as per the instructions issued by the Administration. By the letter dated 8.2.89 the Asstt. Personal Officer, Moradabad informed the Loco Foreman, N.E. Laksar Junction that the applicant has been directed for engagement as Substitute Loco Cleaner in the scale of Rs.750-940 and his number of total working days is shown as 492. The casual labour card which is also present in the departmental file shows for 92 days he worked with IOW Chandausi. This card also shows that actually this is the earliest working period of the applicant it is signed by IOW Shri S.P. Aggarwal and this is admitted by one of the witnesses Shri Radhey Shyam who has admitted that these signatures are of Shri S.P. Aggarwal, IOW Special, Chandausi and the writing is also of Shri S.P. Aggarwal. This witness has worked under IOW Chandausi w.e.f. 30.1.76 to 3.7.91. This reply he has given in an answer to a question by the Inquiry Officer himself. Therefore, the entry in the casual labour card cannot be said to be forged. Only 2 inference can be drawn that Shri S.P. Aggarwal has wrongly made the entry or that the entry is correct and the verification is not available at this point of time in 1992 from the office of IOW Chandausi.

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The Inquiry Officer has drawn illogical inference that the record is not available, this entry is forged. This is totally perverse finding and cannot be accepted.

7. Under D&A Rules, 1968 the procedure for inquiry is laid down under Rule 9, the charge against the delinquent is to be established by examining the documents or the witnesses produced by the Administration in support of the charge. If the witnesses or documents of the Administration do not support the charge against the delinquent than in no case it can be said that the charge is proved. In the present case without going through the procedure and the guidelines for appreciating evidence produced by the Administration, the Inquiry Officer has abruptly drawn the conclusion from a fact which is not established. When the record of that period is not available and that is observed by the Inquiry Officer in his report how it can be said that the charge is proved against the applicant. This finding is totally based on conjectures and suspicion.

8. The disciplinary authority as well as appellate authority have not at all applied mind. The order passed by the appellate authority is quoted above. The appellate authority has not considered the various points raised by the applicant in the memo. of appeal.

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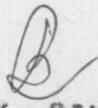
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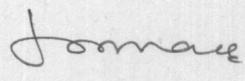
9. The appellate authority should consider the various points raised in the memo. of appeal and whether the procedure laid down for holding the inquiry has been followed or not. The appellate authority can also appreciate the evidence whether the finding given by the Inquiry Officer can be reached according to law or not. The applicant may also have been given an opportunity of hearing if there was any doubt regarding the averments made in the memo. of appeal. In fact the report of the Inquiry Officer shows that he has not discussed the evidence of any of the 3 witnesses examined by him during the course of inquiry. The letter of AEN, Najibabad dated 29.7.90 has been mentioned where it is specifically written against Item No.9 that the verified period is 353 days and 92 days period from 15.7.78 to 14.11.78 may further be got verified from the office of IOW, Chandauli. What steps have been taken in this regard. ~~He~~ has not been considered by the appellate authority and the charge memo. was issued only to the effect that the verification of this period could not be done for want of availability of the record. If the record is not available for a particular period then the applicant is not to be blamed and the appellate authority should have considered this fact. In fact there is an evidence that the live casual register is not available. Thus, the appellate authority has not discharged his function according to rules.

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10. The fact remains that there is no evidence against the applicant that he has forged the casual labour card and wrongly shown the period of 92 days working as casual labourer with IOW Chandausi. The order of punishment therefore has to be quashed.

11. The impugned order of punishment dated 19.3.93 and the appellate order dated 6.11.93 are quashed and set aside with directions to the respondents to reinstate the applicant on the post of Substitute Loco Cleaner within one month from the date of receipt of the copy of the judgement. The applicant however, will not be entitled to any wages from the date of his removal from the service i.e. 19.3.93 till the date of his reinstatement by virtue of this order. He will only be paid wages after he joins duty. However, ^{and continuity in service} his seniority ^{shall be counted for whole of this} period and he will not ~~lose~~ his original seniority by virtue of his engagement by the order dated 8.2.89. M.A. 3018 is also disposed of with no order as to cost. The Respondents would also ^{re} consider ~~re~~ for the wages for the period of suspension.


(B.K. SINGH)
Member (A)


(J.P. SHARMA)
Member (J)

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