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CAT/7/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI**

**O.A. No.** 2717/93  
**T.A. No.**

199

**DATE OF DECISION** 30-6-97

<u>Shri Kartar Singh</u>	<b>Petitioner</b>
<u>Shri B.S. Mainee</u>	<b>Advocate for the Petitioner(s)</b>
<b>Versus</b>	
<u>UOI through Genl. Manager &amp; Ors</u>	<b>Respondent</b>
<u>Shri K.K. Patel</u>	<b>Advocate for the Respondent(s)</b>

**CORAM**

**The Hon'ble** Smt. Lakshmi Swaminathan, Member (J)

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

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

*Lakshmi Swaminathan*  
 (Smt. Lakshmi Swaminathan)  
 Member (J)

Central Administrative Tribunal  
Principal Bench

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O.A. 2717/93

New Delhi this the 30th day of June, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

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

Shri Kartar Singh,  
Ex. Substitute Cleaner,  
under Loco-Foreman,  
Lakshar.

...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 K.K. Patel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who was working as Substitute Cleaner under the Loco Foreman, Lakshar, is aggrieved by the appellate authority's order dated 3.8.1993 removing him from service and the appellate authority's order dated 4.11.1993 dismissing his appeal against the penalty order.

2. The applicant states that while working as Substitute Cleaner under the Loco Foreman, Lakshar, he was issued a memorandum of chargesheet on 11.6.1987 for ~~the~~ major penalty, alleging that he had not worked under PWI (Special), Ghaziabad during the period from 15.7.1978 to 14.11.1978. He was charged with submitting a forged casual labour card. The charges levelled against him were denied which read as follows:

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"From the Casual Labour Card No. E/121 as produced by Shri Kartar Singh, it was revealed that he has worked from 15.7.1978 to 14.11.1978 under PWI/Spl. Ghaziabad and on the basis of his previous working under PWI/Spl. Ghaziabad, he was given engagement as sub-cleaner under LF/LRJ. But during the course of enquiry conducted by SWLI, it was revealed that there is no post of PWI/Spl at Ghaziabad and he has not worked under PWI/GZB as reported by PWI/Ghaziabad during the course of enquiry. Thus he is responsible for submitting forged casual labour card. He is thereby violated Rule No. 3 item No. 1 to 3 of the Railway Servant Conduct Rule, 1966".

Thereafter, disciplinary proceedings were conducted against him. Shri B.L. Sharma, Lakshar, was nominated as an Inquiry Officer. After examining the witnesses and completing the inquiry, the Inquiry Officer held that the charges levelled against the applicant are not proved. Thereafter, after receipt of the findings of the Inquiry Officer, the disciplinary authority did not accept the report on the ground that the PWI (Special), Ghaziabad, who verified the working days in the year 1978 was not examined. He also held that Shri J.C. Sharma, Head Clerk, should also have been cross-examined for identification/verification of PWI/Special signatures. Due to these lapses in the disciplinary proceedings, the disciplinary authority passed the orders for reinvestigation and another Inquiry Officer, Shri R.B. Gaba was appointed, who submitted his report to the A.M.E. on 22.6.1990. The A.M.E. without supplying a copy of the Inquiry/ <sup>Officer's</sup> report passed <sup>an</sup> order of dismissal. On appeal submitted by the applicant to the Sr. Divisional Mechanical Engineer and in pursuance of the order passed in O.A. 2438/90 challenging the order of dismissal, his appeal was accepted and the order of dismissal from service dated 8.8.1990 was set aside by order dated 1.4.1993. A copy of the Inquiry Officer's report was also sent to the applicant giving him an opportunity to make <sup>his</sup> representation.

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The applicant <sup>has</sup> submitted that without considering his representation dated 3.5.1993, the AME has passed the impugned order dated 3.8.1993 removing him from service. He further submits that the appellate authority has also passed a non-speaking order dismissing his appeal by the impugned order dated 4.11.1993. One of the main grounds urged by Shri B.S. Mainee, learned counsel, is that the action of the respondents in nominating another Inquiry Officer ~~and~~ to hold a fresh inquiry is illegal and against the rules. When the Inquiry Officer appointed by the disciplinary authority, Shri B.L. Sharma, had exonerated the applicant, according to him, the Railway Servants (Discipline and Appeal) Rules, 1968 do not provide for another de-novo inquiry by another officer in the same matter. He has also further submitted that even if the reason given by the disciplinary authority is accepted that another Inquiry Officer is to be appointed because the PWI(Spl) who verified the working days in the year 1978 was not examined, the fact is that this officer was not examined in the subsequent inquiry also. He has also submitted that the disciplinary authority has passed the impugned order of removal from service without giving him an opportunity to make his submissions and he had not applied his mind to the reply given by him on 3.5.1993. The appellate authority has also failed to apply his mind on the various grounds he has taken in the appeal, who has passed a non-speaking order. Shri Mainee, learned counsel, relies on the judgements of the Supreme Court and the Tribunal in K.R. Deb Vs. The Collector of Central Excise, Shillong (AIR 1971 SC 1447) and V. Ramabhadran Vs. Union of India (SLJ 1992(1)CAT 46) to show that if there is some defect in the inquiry conducted by the Inquiry Officer, the disciplinary authority can direct the Inquiry Officer to conduct further inquiries in respect of that matter but it cannot direct a fresh inquiry to be conducted by some other officer. He has, therefore, submitted that the application may be allowed and the impugned orders may be quashed directing the respondents to reinstate the applicant with all consequential benefits.

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3. We have seen the records, including the reply of the respondents and considered the submissions made by Shri K.K. Patel, learned counsel. The respondents have submitted that the impugned orders had been passed in accordance with the statutory rules provided by the Railway Board. They have admitted that the disciplinary authority did not accept the findings of the first Inquiry Officer, Shri B.L. Sharma, on technical grounds as the Chief Authorities who were involved in this affair were not examined by the Inquiry Officer. They have, therefore, stated that a fresh inquiry was conducted to meet the ends of justice. They also rely on the certificate given by the applicant that he has been allowed to avail full opportunity as per <sup>the</sup> extant rules during his departmental proceedings and he has no complaint of any sort. They further submit that after the Inquiry Officer's report was given to the applicant, the competent authority has also considered his representation. They have submitted that the second Inquiry Officer after going through the evidence had come to ~~the~~ conclusion that the charges levelled against the applicant that he did not work under PWI/Spl, Ghaziabad from 15.7.1978 to 14.11.1978 and that the casual labour card produced by him was bogus, were proved. It is, however, relevant to note that in the reply, the respondents have themselves admitted that even though the disciplinary authority was not satisfied with the previous Inquiry Officer, it ordered a fresh inquiry & the latter Inquiry Officer also did not examine PWI/Spl. Ghaziabad because he could not be found despite the <sup>made</sup> sincere efforts/by the Inquiry Officer. The respondents have in their written submissions submitted that they had detected some fraud in the employment and that is why the departmental inquiry had been instituted against the applicant and thereafter he was removed from service. They have, therefore, submitted that the conclusion arrived at by the competent authority and the impugned orders have been correctly passed and that the application may be dismissed.



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"It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9".

6. Having regard, therefore, to the facts in this case, the submissions made by the respondents and the provisions of Rule 10(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the procedure adopted by the respondents in appointing a new Inquiry Officer to hold a fresh inquiry is illegal. Further, the disciplinary authority had issued the penalty order on 3.8.1993 solely on the findings of the second Inquiry Officer, Shri Gaba. The fact that the applicant had given a declaration that he had been given full opportunity during the disciplinary proceedings cannot be held against him as the respondents/ themselves have ignored the rules and taken action contrary to the procedure laid down. In the appeal filed by the applicant to the appellate authority dated 18.8.1993, he has brought out all these facts, specially regarding the order of the disciplinary authority to conduct a de novo inquiry which is against the rules. The appellate authority without considering any of the grounds taken by the applicant have dismissed the appeal on 4.11.1993 by a cryptic order stating, inter alia, that the case has been dealt with as per the rules. We are unable to agree with this as we find both the disciplinary authority's order as well as the appellate authority's order are contrary to the rules and are, therefore, liable to be set aside.

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7. Therefore, this application partly succeeds and the impugned orders dated 3.8.1993 and 4.11.1993 which are not in accordance with the Rules are quashed and set aside. The applicant shall be reinstated in service but shall not be entitled to any backwages for the period he has been out of service. The charge is regarding submission of a forged casual labour card in order to seek employment in which the respondents had taken departmental action and thereafter removed him from service. As held above, the procedure adopted by the respondents is not in accordance with the rules. However, since the question is one of/ <sup>alleged</sup> fraudulent action, we are of the view that in the interest of justice the <sup>should</sup> matter be remitted to the appellate authority to reconsider the case and pass appropriate orders in accordance with law after giving the applicant an opportunity of hearing. This action should be done within a period of three months from the date of receipt of a copy of this order. No order as to costs.

*R.K. Ahooja*  
(R.K. Ahooja)  
Member(A)

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member(J)

'SRD'