

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.332/93

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New Delhi this the 23 Day of September, 1998

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

Som Parkash Mishra,
S/o Shri Sunder Lal
Substitute Loco Cleaner
Loco Shed, Northern Railway,
Moradabad. Residential Address:

Som Parkash Mishra,
H-184 Vikas Puri, New Delhi. Applicant

(By Advocate: Shri G.D. Bhandari)

-Versus-

1. Union of India through
General Manager
Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad. Respondents

(By Advocate: Shri O.P. Kshatriya)

ORDER

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

This is the second round of litigation arising from orders of imposition of the penalty of dismissal from service. Briefly stated, the facts of the case are that the applicant who claimed to have rendered casual service with the respondents was on that basis appointed Sub Loco Cleaner, Northern Railway, Moradabad. At the time of appointment he submitted the Casual Labour Card and the educational qualification certificate with his application. He was placed under suspension vide order dated 28.11.1990 followed by a major penalty chargesheet on the allegation that he had secured employment by false declaration of his age and qualification by producing a fake certificate of school transfer. After the conclusion

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of the disciplinary proceedings, the disciplinary authority imposed the penalty of dismissal from service. The applicant, however, filed an O.A. No. 2340/91 challenging the order mainly on the ground that the report of the preliminary enquiry and also the enquiry report of the disciplinary proceedings conducted by the respondents were not supplied to him and he had not been given a show cause notice. The O.A. was allowed vide order dated 20.2.1992, the order of dismissal was set aside and the respondents were directed to continue the disciplinary proceedings against the applicant from the stage of supplying the copy of the enquiry report. Thereafter, the disciplinary authority issued a show cause notice to the applicant and supplied him the copy of the report of the enquiry officer.

2. After considering his representation, the disciplinary authority once again imposed the impugned order of dismissal dated 8.9.1992. This had led to the present O.A.

3. The applicant has assailed the order of the disciplinary authority on various grounds including that the copy of the reports of preliminary enquiries were not supplied to him; that he was not allowed access to certain documents from his personal file; that the Head Master of the School from where the certificate was obtained was not examined despite the directions of the disciplinary authority; and that there was no application of mind while issuing the impugned order of dismissal. The main defence of the applicant was that the certificate submitted by him had been replaced in the

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personal file and he had therefore produced the duplicate certificate from the Head Master of the School where he had actually studied. The applicant had sought permission to examine his personal file but the permission was not given on the ground that he had not availed of the opportunity when permission had been given earlier to make the inspection on two different occasions. Similarly, in regard to non supply of the preliminary enquiry report the stand of the respondents was that the same had not been cited in the enquiry report nor had been referred to at any stage in the disciplinary proceedings. It is not necessary to examine these points raised by the applicant and the respondents because the impugned order is liable to be struck down on the ground of being a non-speaking order.

4. The order of disciplinary authority dated 8.9.1992 reads as follows:

"I have carefully considered your representation dated 4.6.92 in reply to the Memorandum of Show Cause Notice No. even no. dated 2.4.92. I do not find your representation to be satisfactory due to the following reasons:
Defence reply dated 1.5.92 is insufficient and irrelevant for acceptance of report of the E.O.

I, therefore, hold you guilty of the charge(s) viz mentioned in SF 5 (illegible) dt. 27.11.90, levelled against you and have decided to impose upon you the penalty of compulsory retirement/removal/dismissal from service. You are, therefore, compulsorily retired/removed/dismissed from service with effect from with immediate effect." (Emphasis supplied).

5. The learned counsel for the applicant, Shri G.D.Bhandari, has shown us the instructions of the Railways on the need for speaking orders by disciplinary authorities. These instructions contained in OM

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No. 134/I/81/R-AAVD-I dated 13.7.1981 cite the observations of the Supreme Court in Mahabir Prasad Vs. State of U.P. AIR 1970 SC 1302 that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not the result of caprice, whims or fancy or reached on grounds of policy or expediency. The disciplinary authorities have therefore been reminded to issue self contained speaking and reasoned orders. This Tribunal in its order in Mool Chand Vs. Union of India in O.A. No. 1343/94 and the case of Bakhtiar Hussain Vs. Union of India in O.A. No. 2610/93 has also held that the cryptic orders of the disciplinary authority in cyclostyled form disclose non-application of mind by the disciplinary authorities. In the present case also a bald statement that the representation of the charge officer was "in sufficient and irrelevant" cannot be described as a speaking and reasoned discussion of the issues raised by the charged officer in his defence. We have already mentioned in the proceeding paragraphs some of these points in regard to the non supply of the preliminary enquiry report, denial of the opportunity to examine the official documents like the personal file and the non production of defence witnesses. Whether the points raised by the charge officer were valid or not is immaterial; what is crucial is that the disciplinary authority applied its mind to these points raised by the applicant and for reasons stated came to a certain conclusion. But what we find in the impugned order is nothing but a statement that the

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representative is irrelevant and in-sufficient. We, therefore, find it totally unacceptable. The impugned order is therefore quashed.

6. The next question is whether the respondents should be allowed at this stage to review the enquiry giving them the liberty to pass a fresh order after proper application of mind and giving a speaking and reasoned order. We cannot, however, but note that the disciplinary proceedings have been going on since 1990 and it was on account of the respondents default in providing the copy of the enquiry report to the applicant that the first order of 1992 had to be quashed. Another six years have since passed and the proceedings are still incomplete. A Govt. servant cannot be placed in a limbo of suspension and kept there indifinately due to the inefficiency and callousness of the respondents nor is it proper that public money should be wasted for years together in payment of suspension allowance. We, therefore, consider that the proper relief would be that the disciplinary proceedings should also stand quashed. Accordingly, we order that the applicant may be reinstated in service with his seniority and notional fixation of pay as if he had continued in service. He will, however, not be entitled to any back wages but will be allowed suspension allowance at the same rate as was being given to him before the issue of the impugned order of dismissal.

Jm.

(K.M.Agarwal)
Chairman

R.K. Ahuja
(R.K. Ahuja)
Member(A)

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