

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

(11)

O.A. no. 360 of 1993

New Delhi, dated the 12th Nov., 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Mahesh Prasad,
S/o Shri Gajadhar Lal,
Ex. Sub Loco Cleaner,
Northern Railway,
Locl Shed,
Moradabad.

R/o Jhuggi, ND Block,
Visakha Enclave,
Delhi-110034.

... APPLICANT

(By Advocate: Shri G.D. Bhandari)

VERSUS

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

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

... RESPONDENTS

(By Advocate: Shri P.S. Mahendru)

ORDER (Oral)

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

Applicant impugns the Respondents' order dated 20.2.92 removing him from service (Annexure A-3) and the appellate order dated 21.4.92 (Annexure A-1) rejecting the appeal and confirming the Disciplinary Authority's order.

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2. A departmental inquiry was instituted against the applicant on the charge that he had secured false working certificate of his having worked as a casual labourer under C.P.W.I. SPN nad S.M. Kahilia so as to secure employment as Substitute Loco Cleaner on MB Divn. of Northern Railway in a fraudulent manner and thus failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of Railway servants and violated Rule 3(i), (ii) and (iii) of Railway Services Conduct Rules, 1966.

3. The E.O. submitted his report o n 24.12.91 (Annexure A-17), and a copy of the same was sent to the applicant for representation if any on 23.1.92. Nothing is on record to indicate that the applicant had submitted his representation to Respondents' letter dated 23.1.92, but in the impugned removal order dated 20.2.92 the Disciplinary Authority states that having considered applicant's earlier representation dated 29.6.91 (Annexure A-14) in reply to Charge Sheet dated 25.4.91, he did not find the applicant's representation to be satisfactory due to the following reasons:

"Secured employment on production of false working certificate of CPWI/SPN SM/KH"

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The Disciplinary Authority's order further states that he held the applicant guilty of the charge levelled against him and had decided to impose upon him the penalty of removal from service.

4. Various grounds were raised by applicant's counsel Shri Bhandari but the first ground he has drawn our attention to, is that the aforesaid order of the Disciplinary Authority refers neither to the charges against the applicant nor the evidence for and against him, and without reference to the above, by holding that he had secured employment by producing false certificate, has displayed non-application of mind. It has also been pointed out by Shri Bhandari that the appellate order dated 21.4.92 suffers from the same vice, namely non-application of mind, being a cryptic order which does not discuss any of the points raised in the detailed appeal dated 25.3.92 (Annexure A-18) filed by the applicant.

5. In this connection Shri Bhandari has relied upon Respondents' own letter dated 3.3.78 (on record) wherein it has been enjoined that in all disciplinary cases (whether of minor penalty or major penalty), the Disciplinary Authority should invariably pass speaking orders indicating the reasons for the conclusion arrived at. The letter goes on to state that the Disciplinary Authority imposing the penalty must apply its mind to the facts, circumstances and record of the case, and then record its findings on each imputation of misconduct and misbehaviour

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and the Disciplinary Authority should give brief reasons for its findings 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 Railway Servant to explain his case in his appeal. All the relevant provisions of D&AR Rules should be ensured to be complied with, and this fact where deemed necessary may be recorded also in the orders. All the points raised by the delinquent railway servant in his defence/appeal be considered and it should be recorded by the Disciplinary Authority as to why the said points are not tenable.

6. These instructions are similar to the instructions issued by the Govt. of India, D.P.A.R. as contained in their O.M. dated 13.7.81 (on record) which has emphasised that it is obligatory upon Disciplinary Authority/Appellate Authority to state the reasons on the basis of which they have come to particular conclusion so that the decision so reached is

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according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. The necessity² to record reasons is greater if the order is subject to appeal.

6. A further infirmity pointed out by Shri Bhandari is that the applicant was proceeded against consequent upon investigations conducted by General Manager (Vig.), Headquarters Office, New Delhi which is evident from the opening paragraph of the enquiry report, but the copy of the aforesaid investigation report was not supplied to the applicant. In this connection he has invited our attention to Respondents' circular dated 24.8.88 which indicates that it would not be possible to deny to access to such reports when those have been relied upon at the time of framing the charge.

7. Respondents' counsel Shri Mahendru has argued that as the applicant had not submitted any representation against the findings of the enquiry report, the disciplinary authority was not required to state in detail^{the} reasons as to why he was accepting the E.O's findings, and the impugned order dated 20.2.92 implied that the disciplinary authority after full application of mind and considering the findings of the E.O. had accepted the same. He emphasised that the letter dated 23.1.92 forwarding a copy of the enquiry report itself states that suitable decision would be taken after considering the report, and in case no representation was received within fifteen

days of its receipt, it would be presumed that the applicant had nothing to represent, and under the circumstances it must be presumed that the disciplinary authority had passed the impugned orders after fully considering the E.O's report. Shri Mahendru has also argued that the appellate order was a speaking order, which stated that the various grounds taken in appeal had been gone through in detail, and warranted by evidence and record the appeal order had held that the penalty imposed against applicant was adequate, which went to show that the evidence as well as the records were fully considered by him.

8. In this connection Shri Mahendru has also relied upon the Hon'ble Supreme Court's ruling in UOI Vs. M. Bhaskaran 1996 (1) SCSLJ 1 which lays down that when fraud is detected the appointment orders themselves, which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled, and were at least voidable at the option of the employer concerned. Yet another ruling relied upon by Shri Mahendru is J & K Public Service Commission Vs. F. Rasool 1996 (1) SC SLJ 4; which lays down that there is no infirmity in cancelling the appointment which is based on wrong information as to the applicant's eligibility.

9. In this connection Shri Mahendru has invited our attention to para 4.5 & 4.7 of the Respondents' reply wherein it has been stated that the applicant did not fulfil the requisite conditions for appointment as Sub-Loce Cleaner, which is not specifically denied in the corresponding paragraph of the rejoinder.

10. Without going into the merits of the case we hold that the impugned removal order dated 20.2.92 and the appellate order dated 21.4.92 cannot be sustained as the same do not conform to Respondents' own circular dated 3.3.78 which requires that both Disc. Authority as well Appellate Authority should invariably pass speaking orders after recording their findings on each imputation of misconduct and misbehaviour, with brief reasons so as to show that there has been proper application of mind and after discussing all the points raised by the delinquent railway servant. Under the circumstance, the arguments advanced by Shri Mahendru and the rulings relied upon by him do not avail the respondents.

11. In the result the OA succeeds and is allowed to the extent that

- (i) The Disciplinary Authority's order dated 20.2.92 and the appellate Authority's order dated 21.4.92 are quashed and set aside.
 - (ii) We make it clear that we do not express any opinion on the merits of the E.O's findings on the charge sheet.
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(iii) Applicant should be reinstated within six weeks from the date of receipt of this order.

(iv) It will be open to the Respondents to proceed with the case as fresh in accordance with rules and instructions on the subject.

(v) No back wages for the intervening period.

(iv) No costs.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
MEMBER (J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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