

Central Administrative Tribunal
Principal Bench

O.A. 611/93

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New Delhi this the **26** th day of November, 1997

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Veerpal Singh,
S/o Shri Suraj Bali Singh,
Ex-Sub Loco Cleaner,
Northern Railway,
Loco Shed,
Moradabad. ... Applicant.

By Advocate Shri G.D. Bhandari.

Versus

Union of India,
through
The General Manager,
Northern Railway,
Barod House,
New Delhi.

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

By Advocate Shri B.K. Bansal proxy for Shri B.K. Aggarwal.

O R D E R

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

The applicant who was working as Substitute Loco Cleaner, is aggrieved by the respondents' order dated 21.4.1992 in which the appellate authority has confirmed the decision of the disciplinary authority dated 17.2.1992 removing him from service.

2. While challenging the above orders, Shri G.D. Bhandari, learned counsel for the applicant, has submitted that the disciplinary proceedings suffer from a number of illegalities. He has submitted that he would mainly base his arguments on the fact that the impugned orders are in violation of the provisions of the Railway Servants

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(Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules'). He has submitted that the inquiry has been vitiated also on the ground that the basic records, namely, the muster roll, live casual labour register and the attendance registers, etc. were not produced to substantiate the allegations made by the respondents that the applicant did not have the required number of working days. In support of this contention, he has relied on the Full Bench judgement of this Tribunal in **Lal Singh Vs. General Manager, Northern Railway and Anr.** (Full Bench Judgements of CAT 1991-1994 ^{Badrinath} (Vol.III) 251).

3. The other main contention of Shri G.D. Bhandari, learned counsel, is that neither the disciplinary authority's order dated 17.2.1992 nor the appellate authority's order dated 21.4.1992 are reasoned and speaking orders and are in violation of the rules and instructions issued by the Railway Board dated 3.3.1978, the relevant portion of which reads as follows:

"Law requires 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. 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/Appellate Authority as to why the said points are not tenable. This fact must be brought to the notice of all officers for compliance in D& AR cases".

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He has also submitted that since the charges framed against the applicant were preceded by a report of the vigilance inspector, as mentioned in the report of the Inquiry Officer dated 24.12.1991, copy of the investigation report should have been made available to the applicant as provided in the orders of the Railway Board's Circular No. 52E/0/26-III E. (D&A) dated 24.8.68. In this circular, it is mentioned that ordinarily reference to vigilance report is not necessary in the statement of allegations but if any reference is made, it would not be possible to deny access to these reports (copies of the Railway Board's Circular dated 3.3.1978 and 24.8.1968 are placed on record). The learned counsel has relied on the judgements of the Tribunal in Anek Pal Singh Vs. Union of India and Ors. (O.A. 806/92), decided on 23.12.1992, Mool Chand Vs. Union of India & Anr. (O.A. 1343/94), decided on 23.10.1996, Raj Kumar Vs. Union of India & Anr. (O.A. 532/93) decided on 18.8.1997, Mahesh Chander Tewari Vs. Union of India & Anr. (O.A. 622/1993), decided on 13.10.1997 (copies placed on record). The learned counsel has, therefore, submitted that since the respondents have not complied with the rules and instructions and have violated the principles of natural justice, the impugned orders should be set aside and the applicant reinstated in service with all consequential benefits.

4. The respondents in their reply have controverted the above facts. They have submitted that the certificate produced by the applicant was found forged in D&AR inquiry on the basis of the investigations by the Vigilance Branch of the Headquarter and the findings of

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the Inquiry Officer. They have submitted that the applicant had applied for the post though he was not fulfilling the eligibility conditions. According to them, neither his name was existing in Live Casual Labour Register nor was he within the age limit nor had he worked even for a single day before getting the employment as Loco Cleaner. He had produced forged documents and colluded with the concerned staff in order to get employment by fraudulent and illegal means. According to them, the charges against the applicant were proved in the inquiry and Shri B.K. Dass, who had made verification in this case had also been chargesheeted for giving false ~~by~~ verification. They have submitted that the representations made by the applicant have been fully considered by the competent authority and have also submitted that the impugned orders are in order. The learned proxy counsel has produced the departmental records regarding which Shri G.D. Bhandari, learned counsel, submitted that there was no need to refer to it as he has only made legal submissions challenging the impugned orders.

5. In the facts and circumstances of the case, we do not propose to go into merits of the inquiry proceedings held against the applicant. We, however, will deal with the main contentions of the learned counsel for the applicant regarding the validity of the impugned orders passed by the competent authority ^{ies} dated 17.2.1992 and 21.4.1992. The appellate authority's order is a cryptic order without giving any reasons for the conclusions reached therein. All that is stated in that order is that 'on going through the appeal of Shri Veer Pal Singh I conclude that the punishment imposed is

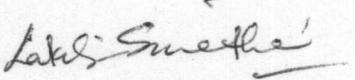
adequate and hence confirm it". Under Rule 22(2) of the Rules, the appellate authority while disposing of the appeal is to ensure, inter alia, that the procedure laid down in the rules has been complied with, to see whether the findings of the disciplinary authority are warranted by the evidence on the record and to see whether the penalty imposed is adequate, inadequate or severe while confirming, enhancing, reducing or setting aside the penalty or remitting the case to the disciplinary authority with such directions as it may deem fit in the circumstances of the case. On perusal of the appellate authority's order passed under these provisions of the Rules, we find that in confirming the order of removal passed by the disciplinary authority against the applicant, ^{whatsoever} ~~at all~~ no reasons have been given nor has there been any reference to the evidence on record. It is settled law that a quasi judicial order must be supported by reasons, which proposition has been followed by the Tribunal in the decisions, referred to above and relied upon by the applicant (see the judgement of the Supreme Court in R.P. Bhat Vs. Union of India & Ors. (AIR 1996 SC 149)). We find that the disciplinary authority has also passed the impugned order dated 17.2.1992 finding the applicant guilty of the charges mentioned in SF 5 dated 28.9.1991 and has decided to impose the penalty of removal from service without reference to any evidence on record ~~or~~ ^{or} reasons for the conclusions which justifies imposing such a penalty showing application of mind.

6. In view of the above, the O.A. succeeds. We, however, make it clear that we have not expressed any opinion on the merits of the chargesheet, hence we do not

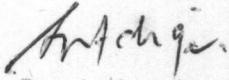
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think that it is necessary to see the relevant departmental records. We dispose of the O.A. with the following orders:

The impugned orders of the disciplinary authority dated 17.2.1992 and the appellate authority dated 21.4.1992 are quashed and set aside. The applicant shall be taken on duty within a period of ¹² ~~one~~ months from the date of receipt of a copy of this order. However, liberty is granted to the respondents to proceed with the case afresh in accordance with the relevant rules and instructions. The applicant shall, however, not be entitled to any backwages for the intervening period when he was not on duty. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)

SRD


(S.R. Adige)
Vice Chairman (A)