(17)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD

Dated: Allahabad, the 12th day of April, 2001.

Coram: Hon'ble Mr. S. Dayal, AM

Hon'ble Mr. Rafiq Uddin, JM

ORIGINAL APPLICATION NO. 1144 OF 1998

Ajit Kumar Srivastava,
s/o Sri S.N. Srivastava,
r/o c/o Sri J.L. Srivastava,
House No.58A, Shivpur, Shahbag Ganj,
Post Padri Bazar, District Gorakhpur.

. . . . . Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION NO. 401 OF 1998

Rajendra Pratap Chauhan,
s/o Sri P.C. Chauhan,
r/o Dhamshala Bazar,
Gorakhpur.

. . . . . .Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION No.402 OF 1998

Ashok Kumar Verma, aged about 33 yrs.,
s/o Sri R.K. Verma,
r/o G-48, Sarvodaya Nagar,
Lucknow, presently residing
at 127/80, 'U' Block,
Nirala Nagar, Kanpur.

. . . . . Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION NO.403 OF 1998

Suresh Chandra Verma,
s/o late Sri R.N. Verma,
r/o 127/80 'U' Block
Nirala Nagar, Kanpur.

. . . . .Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION NO.404 OF 1998

Rajesh Kumar,
s/o Sri Ram Murti,
r/o village Dihullia,
Post Office P.P. Ganj,
District Gorakhpur.

. . . . . .Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION NO. 405 OF 1998

Deen Dayal Pandey,
son of Sri Ravindra Nath Pandey,
r/o presently residing at Quarter
No.5-89 G Baulia Railway Colony,
Gorakhpur, r/o village Ram Janki Nagar,
Basaratpur, District Gorakhpur.

. . . . . Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION NO.711 OF 1998

Girijesh Kumar Srivastava,
aged about 35 years,
s/o late Sri Devi Dayal Srivastava,
Indra Awas, House No.14, near
Garibipurwa, Post Office Baragaon,
District Gonda.

. . . . . Applicant

(By Advocate: Sri Kushal Kant)

with

ORIGINAL APPLICATION NO. 712 OF 1998

Pramod Kumar Pandey,
aged about 34 years,
s/o Sri Shriniwas Pandey,
r/o House No.14, Mohalla Mahraniganj,
Chhotey Lal Ka Hata, near Baragaon
Police Chauki, P.O. Baragaon,
District Gonda.

. . . . . Applicant

(By Advocate: Kushal Kant)

with

ORIGINAL APPLICATION NO. 713 OF 1998

Vinod Kumar Srivastava,
aged about 30 years,
s/o Sri Devi Dayal Srivastava,
r/o Indira Awas, House No.14
near Giribipurwa, Post Office
Baragaon, District Gonda.

. . . . . Applicant

(By advocate: Sri Kushal Kant)

Versus

1. Union of India through Secretary,
Ministry of Railways,
New Delhi.

2. General Manager,
North Eastern Railway,
Gorakhpur.

3. Divisional Railway Manager,
North Eastern Railway,
Lucknow.

4. Divisional Commercial Manager,
North Eastern Railway,
Lucknow.

5. Assistant Commercial Manager,
North Eastern Railway,
Lucknow.

. . . . Respondents
in all nine OAs.

(By Advocate: Sri V.K. Goel
counsel for the
Respondents
in all nine OAs)

Contd...

Continued..5

_O_R_D_E_R_ (RESERVED)

(By Hon'ble Mr. S.Dayal, AM)

These nine Original Applications filed by nine applicants raise common issues of fact and law and have, therefore, been heard together and a common order is being passed.

2. The learned counsel for the respondents sought time to file Counter Reply in OA 1144 of 1998. However, as facts are identical with other eight OAs, the learned counsel for the applicants agreed that the learned counsel for the respondents could advance arguments on the basis of counter replies in other OAs.

3. These OAs seek the same reliefs, which are

(i) set aside order dated 22.12.97,

(ii) set aside charge-sheet dated 25.3.98,

(iii) A direction to the respondents not to disturb the working of the applicants at their respective places of posting as Mobile Booking Clerks, and

(iv) A direction to the respondents to continue to pay regular salary to the applicants.

4. The applicants have claimed that they had worked as Mobile Booking Clerks in the eighties. The respondents are alleged to have circulated/advertised posts of Part-time Mobile Booking Clerks on a number of times and the applicants applied on the basis of their having worked in the past for periods shown above. The applicants claim that they were selected and appointed. Their periods of work and dates of appointment, as claimed by the

applicants, are shown below:-

Applicant in OA No.	Period of work as Mobile Booking Clerk as per applicant's claim	Date of apptt. as Part-time Mobile Booking Clerk.
Applicant in OA 1144/98	1.8.83 to 30.9.85	22-4-91
Applicant in OA 401/98	28.4.83 to 25.2.84	25-2-92
Applicant in OA 402/98	8.2.84 to 31.1.86	29-8-90
Applicant in OA 403/98	2.1.83 to 30.7.84	3.4.91
Applicant in OA 404/98	17.2.84 to 2.9.84	3.4.91
Applicant in OA 405/98	1.6.84 to 20.1.86	3.4.91
Applicant in OA 711/98	3.7.84 to 30.12.84	3.4.91
Applicant in OA 712/98	3.7.84 to 30.12.84	3.4.91
Applicant in OA 713/98	2.11.83 to 26.4.84	3.4.91

5. The respondents in their counter reply have denied that the applicants ever worked as Mobile Booking Clerks prior to 17.11.66. They have stated that charges pending against the applicants are that the applicants had obtained employment in the year 1991 ~~and~~ on the basis of forged certificate that they had worked prior to 1986 as part time Mobile Booking Clerks. They have denied that the vacancies of part-time Mobile Booking Clerks were notified/advertised at different times and the applicants had been engaged in response to that. They have stated that as per

Railway Board Circular dated 6.2.96, applications were invited by way of reinstatement from those who had worked prior to 17.11.86 and appointments had been made on the basis of working day certificates produced by Mobile Booking Clerks. The applicants had submitted applications along with forged certificates and secured employment. They have denied that the departmental proceedings against the applicant stood fully concluded and have stated that order dated 22.12.97 was not an order of punishment on the basis of enquiry held against the applicants but an order of putting off which was converted to order of suspension by order dated 22.4.98. The applicants had been given temporary status by order dated 2.6.97 with effect from the date of their appointment and a new chargesheet was served on them for the same charges on 25.3.98.

6. The learned counsel for the applicant Sri Kushal Kant and learned counsel for the respondents Sri V.K. Goel have been heard and pleadings seen by us.

7. The learned counsel for the applicant in the the light of facts revealed by the respondents in their counter reply has confined his arguments to inadmissibility of de novo proceedings including a new chargesheet. He contended that the disciplinary authority had to act in accordance with provisions of Rule 10 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968. Rule 10 (2) of Railway Servants (Discipline & Appeal) Rules, 1968 reads

as follows:-

> " 10. Action on the inquiry report:
>
> 1. .....
>
> 2. The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be."

He further contended that this rule has been interpretted for guidance of subordinate officers in the circular in vernacular of the Chief Personnel Officer, North Eastern Railway, Gorakhpur, No. E/74/2/Part 8/11 dated 9.10.98 in which he has mentioned that Rule 10 makes provision for only further enquiry and not a de novo enquiry and has admonished them to follow the provisions of this rule strictly.

8. The learned counsel for the applicant has firstly placed reliance on the Full Bench judgment of Central Administrative Tribunal in Rehmatullah Khan Vs. Union of India & Others (1989) to ATC 656, in which conflicting judgments of different Benches were considered to formulate the following question:-

> " to consider the question as to whether the daily-rated workers or casual workers employed in the various departments of the government are entitled to present any application or whether transferred applications pertaining to their service matters can be entertained and decided by the Central Administrative Tribunal."

The answer was:

> " For the reasons indicated above, we are of the view that although a casual labourer does not hold a civil post, he is in the service of the Union. He is essentially in the civil service of the Union. We hold the same view in respect of a civilian similarly employed in the Defence Services who is not a member of the armed forces of the Union. We are further of the view that the Central Administrative Tribunal has jurisdiction to entertain the cases of casual labour/ daily-rated/ daily wager under Section 19 of the Act and also in similar cases in Transferred Applications under Section 29 of the Act."

It is clear from this that the casual labourers will not be entitled to protection under Article 311 of the Constitution of India as his continuance as casual labour depends on availability of work in the unit, in which he is engaged and he can be engaged and disengaged freely on account of intermittent availability or non-availability of work.

9. The learned counsel for the applicant has secondly placed reliance on theDivision Bench order of Central Administrative Tribunal, Calcutta in Birata Behara Vs. Union of India and others (1989) 11 ATC 99, in which in respect of same charge-sheet penalty had been imposed and appeal filed by the applicant against the order of disciplinary authority in the first charge-sheet was not decided, although the respondents

claimed that the appellate authority had ordered a fresh enquiry due to some irregularities noticed in theoriginal proceedings. But, they were unable to produce any order of the appellate authority. The Division Bench held as follows:-

" In the absence of such evidence to show that the appellate authority had indeed quashed the original proceedings and ordered a fresh enquiry, we cannot but come to the conclusion that this is a case of fresh enquiry, we cannot but come to the conclusion that this is a case of fresh charge-sheet being issued by the same disciplinary authority in respect of charges for which a penalty had already been imposed on him. We have, therefore, no hesitation in quashing the impugned charge-sheet dated 10-9-1980 (Annexure D, Pg-12 to the application). "

10. The learned counsel for applicant thirdly places reliance on judgment of Calcutta High Court in Calcutta Municipal Corporation and others Versus S.Wajid Ali and another 1993 (2) SLR 631. But this judgment is also of no help, as it is based on the interpretation of Commissioner's Circular No.6 dated 14.6.1979, which is at variance with Rule 10 (2) of Railway Servants (Discipline and Appeal) Rules, 1968. Besides on merits also, the respondents were found not entitled to proceed against the petitioner afresh.

11. The learned counsel for the applicant further placed reliance on an order of the Principal Bench dated 30.6.97 in O.A. 2717 of 1993 between Sri Kartar Singh Vs. Union of India and others, in which the applicant claimed to have worked as casual labour from 15.7.78 to 14.11.78 and obtained employment as sub-cleaner subsequently on the basis of his previous working. An enquiry was conducted against the applicant in which important witnesses were not examined. The disciplinary authority did not accept the report of Enquiry Officer and passed orders for holding a de novo enquiry which was completed and applicant was dismissed from service without being served with a copy of the enquiry report. The appellate authority on that ground set aside the order of disciplinary authority and disciplinary authority passed order of removal after supplying a copy of the enquiry report to the applicant. The appellate authority did not consider the points raised by the applicant in his enquiry report and passed a non-speaking order. The judgments of the Supreme Court in K.R. Deb Vs. Collector of Central Excise, Shillong, AIR 1971 SC 1947 and V. Ranabhadran Vs. Union of India 1992 (1) SLJ (CAT) 26 were relied upon to contend that if there is any defect in the enquiry conducted by the Enquiry Officer, the Disciplinary Authority can direct an enquiry officer to conduct further inquiries but it cannot direct a fresh enquiry to be conducted by some other officer. The following observation of the Apex Court has been cited in this

case:-

"It seems to us that Rule 5, on the face ot it, really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because same 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 same 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".

It is stated that Rule 15 of CCS (CCA) Rules was in pari materia with Rule 10(2) of Railway Servants (Discipline & Appeal) Rules. The Division Bench observed that the procedure adopted by the Disciplinary Authority in ordering de novo inquiry through another enquiry officer was illegal. However, the directions given were that the Appellate Authority would reconsider the case and pass appropriate orders after hearing the applicant. This direction is at variance with its observations and, therefore, it cannot be said to lay down the proposition that de novo enquiry is not permissible.

12. Lastly, the learned counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in Deputy Secretary to Government Prohibition and Excise Department for St.George Madras Versus A. Bappu 1995 Supp (1) SCC 185. We reproduce the

paras 2, 3 and 4 of the judgment below:-

" 2. We have heard the learned counsel for the appellant and the respondent in person. We enquired of the respondent if he wants the services of an advocate but he said he would like to argue the matter himself.

3. It appears from the order of the Tribunal that an enquiry was initiated against the respondent on the allegation that he had produced a fake school certificate of his qualification for entry into the service. A complaint was also lodged against him with the police. The Tribunal has by the impugned order quashed the police investigation as well as the departmental enquiry and has directed that not only he be reinstated in service but also be promoted to the next higher post. The State having been aggrieved by that order has preferred this appeal.

4. The learned counsel for the State submits that he does not question the Tribunal's order quashing the police investigation but he states that the department's right to enquire into the genuineness of the certificate produced by the respondent for seeking employment cannot be denied to it merely because subsequently he has produced another certificate of another school. The respondent states that both the certificates are of the schools run by the local authorities. Be that as it may, the fact remains that he secured employment on the basis of a certificate which is alleged to be fake. It is another thing he may have produced another certificate of another school, the genuineness whereof may not be questioned. But counsel submits that it is difficult to understand how the Tribunal can refuse the department from proceeding further with the departmental enquiry in regard to the

production of the fake certificate. We appreciate this submission and allow the appeal to a limited extent only, namely, that if any departmental enquiry is initiated and is pending against him, the same may be completed within six months from today but this order will not permit the department to initiate a fresh enquiry if one is not pending. We, however, make it clear that the respondent will be permitted to continue in employment and will not be placed under suspension during the enquiry. We also make it clear that as ordered by the Tribunal he will be given promotion subject to the result of the enquiry. The appeal is allowed to the above limited extent only with no order as to costs."

This judgment also appears to be of no help because the Hon'ble Supreme Court has only laid down that a fresh enquiry cannot be initiated in ~~that~~ a case, if no enquiry was pending.

13. The learned counsel for respondents contested the claim of the learned counsel for the applicant by contending that the order dated 22.12.97 was not a punishment order, that the stage of Rule 10 (2) had not been reached and the chargesheet was withdrawn before that stage and that the order of withdrawal has not been challenged. He has stressed that the respondents had a right to withdraw, cancel and issue a new charge-sheet.

14. That first issue, which arises is whether the applicants establish that they had been served with enquiry report, had furnished their reply, and thereafter order dated 22.12.97 for their removal was passed and subsequently, by order dated 24. 3.98, charge-sheet dated 3.12.93 and order dated 22.12.97 were withdrawn.

15. We find that the applicants had not been able to establish that the enquiry culminating in order of punishment was withdrawn. They have merely so built up their case without believing it to be true. The respondents have claimed that order dated 22.12.97 was for putting the applicants, who were casual labour, off work amounting to their suspension and it was subsequently called suspension by another order dated 22.4.98. The order dated 22.12.97 cannot be taken to be an order of punishment after considering enquiry report and defence statement of the applicants pursuant to the service of the enquiry report on them. If that had been the case, the applicants would have been informed of their right to file an appeal against this order within forty five days. The normal response of the applicants in any case would have been to file an appeal on receipt of order dated 22.12.97, if they had taken it to be punishment order. The order of withdrawal of charge-sheet dated 24.3.98 merely states that charge-sheet was withdrawn on account of technical reasons. The respondents have explained the circumstances of withdrawal of charge-sheet through a supplementary written reply in which they have mentioned that the charge-sheet dated 3.12.93 was issued when the applicants were casual mobile booking clerks and were not entitled to a departmental enquiry. The applicants were granted temporary status in June, 1997 and could have been subjected to departmental proceedings only after that date. Therefore, charge-sheet dated 3.12.93 was withdrawn and was substituted by a similar charge-sheet dated 24.3.98.

16. The second issue is whether any prejudice has been caused to the applicants by withdrawal of the original charge-sheet and to substitution by another charge-sheet. Our finding is that the enquiry report on the basis of the first charge-sheet treated the charge of submission of forged certificate of having worked as fully proved. The applicants have assailed the procedure adopted by the enquiry officer on grounds of non-supply of documents, on-examination of material witnesses, and non-conducting of the entire enquiry in accordance with principles of natural justice in several other ways. Under such circumstances, no prejudice is caused to the applicants of the respondents conduct the entire proceedings afresh. The issuance of a fresh charge-sheet for reasons mentioned in earlier paragraph, especially in a situation when the second charge-sheet is in essence similar to the first charge-sheet and merely corrects the procedural error of issuance of the first charge-sheet, when the applicants had not been conferred temporary status, also does not lead to any prejudice to the cause of the applicants. The applicants have the opportunity to defend themselves in proceedings which hopefully shall be conducted in accordance with principles of natural justice this time.

17. The third issue is whether the applicants have been able to establish that there is an absolute ban on conducting de novo proceedings emanating from the judgments cited before us. We are of the view that the Courts have merely held that the de novo departmental proceedings were not warranted in the facts and circumstances of those cases and do not lay down any law absolutely banning de novo proceedings.

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18. The fourth and last issue is whether the provisions of Railway Servants (Discipline and Appeal) Rules, 1968, ban de novo proceedings. The learned counsel for the applicants had relied upon the judgment of the Apex Court in K.R. Deb's case. But, the ratio of the case is that Rule 15 does not authorise the disciplinary authority to set aside previous enquiry on the ground that the report of inquirying officer does not appeal to the disciplinary authority. We have already seen that the initiation of departmental proceedings afresh by issuance of a fresh charge-sheet was not for any dissatisfaction of the disciplinary authority with the report of the Enquiry Officer but for other reasons, which are cogent. The applicants have, therefore, not challenged the withdrawal of the charge-sheet.

19. In our view, the applicants are not entitled to any relief and the applications stand dismissed with no order as to costs. The respondents may proceed with their departmental enquiry against the applicants on the basis of charge-sheet dated 25.3.1998.

(RAFIQ UDDIN)
JUDICIAL MEMBER

(S. DAYAL)
MEMBER (A)

Nath/