

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 12th day of Dec., 2005.

QUORUM : HON. MR. K.B.S. RAJAN, J.M.

HON. MR. A.K. SINGH, A.M.

O.A. No.1191/01

1. Smt. Madhurima Srivastava, aged about 50 years, Wife of Late M.K. Srivastava.
2. Km. Amita Srivastava, aged about 25 years, D/O Late M.K. Srivastava.
3. Km. Namrata Srivastava, aged about 22 years, D/O Late M.K. Srivastava.
4. Prabhakar Srivastava, aged about 20 years, son of Late M.K. Srivastava

.....Applicants.

Counsel for applicant : Sri S. Ram, Sri A. Kumar and Sri C.P. Gupta.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Additional Divisional Railway Manager, Northern Railway, New Delhi.
3. The Senior Divisional Electrical Engineer/Divisional Electrical Engineer (Traction Machine Shed), Northern Railway, Fazalganj, Kanpur.
4. Shri Y.P. Singh, Divisional Electrical Engineer (Traction Machine Shed), Northern Railway, Kanpur (In person).

.....Respondents.

Counsel for Respondents : Sri A.C. Mishra.

O R D E R

By Hon. Mr. K.B.S. Rajan, J.M.

b

The applicant Shri Mahendra kumar Srivastava, who filed this O.A. having died, his legal heirs have

been brought on record. In this order, however, the deceased individual is termed as the applicant.

2. The applicant was initially appointed Fitter in 1978, promoted as Fitter Gr.II in 1984 and later further promoted as Fitter Gr.I in 1992.

3. On a complaint dated 29.9.1994 made to the Senior Divisional Electrical Engineer against Shri R.Y. Mishra by the applicant, it has been stated by the applicant that a false complaint dated 27.8.1994 was obtained from A.E.E.-TMS, Kanpur on the basis of which a charge sheet dated 26.9.1994 was issued to the applicant stating that in his leave application, the signature of the A.E.E. was found forged.

4. The applicant called for the requisite documents including the Attendance Register and while some of the documents were made available, certain other documents (leave register) were not made available. Inquiry was conducted and as per the report, the charges were said to be proved. The applicant made representation on 12.6.1995 against the inquiry report dated 12.4.1995 in which he has brought the facts that the alleged signature of the A.E.E. was neither sent to the handwriting expert nor was the leave register made available to him. Further, it was contended that the A.E.E. Shri Y.P. Singh, who had certified that his signatures were forged and most probably by Shri M.K. Srivastava, was not examined and thus, a valuable opportunity to cross-examine the said individual was lost.

5. The Disciplinary Authority has passed an order of removal from service vide order dt.14/15.6.1995. The following are the reasons given in the said order :-

b/w

"4. There is no need to examine Sri Y.P. Singh (Ex.AEE/TMS) presently working as DEE/PSO/TDL in this case. His report dated 7.8.94 is enough. However, the Enquiry Officer has spoken to him on phone and had discussed the case.

5. The relevant documents necessary during the enquiry has been produced by the enquiry officer and shown to the delinquent employee and his defence counsel.

The enquiry report established the fact that Sri M.K. Srivastava is in the habit of remaining absent from duty very frequently and is used to apply for post facto leave on one pretext or the other, and on occasions he has been granted leave as is evident from his leave application dt. 3.5.94, 19.5.94, 31.1.94 and 11.6.94.

Circumstances and witnesses have proved that Sri M.K. Srivastava tried to get his leave regularized for the period 28.7.94 to 3.8.94 and 22.8.94 to 28.8.94 by forging the signature of AEE/TPS because it was a closing day of the pay roll i.e. 27.8.94 for artisan category of staff. On the day the Time Office clerk is usually over loaded with the work throughout the day for updating his records and finalizing the position.

Sri M.K. Srivastava committed the offence by snatching the leave register from Time Office clerk and taking it himself for sanctioning to AEE/TMS. When asked to wait by AEE he himself forged AEE's signature as there was no time for him.

The previous history of the delinquent employee (Sri M.K. Srivastava) also reveals this fact that he always try to get his absence period regularized by any means for which he has been penalized (Ref. Sr.DEE/TS/CMB's letter No.230-Elect/TPS/Confd./EPS/13 B dt. 30.10.82.

Forging of signature is a very serious offence and I hold Sri M.K. Srivastava, guilty of

forging the signature of Sri Y.P. Singh Ex.AEE/TMS for regularizing his absence from 28.7.94 to 26.8.94. He has violated the Railway Service Conduct Rules 3(i) & 3(iii).

Undersigned is of the opinion that such a person like M.K. Srivastava, who do not maintain devotion to duties, are in the habit of remaining absent from duty, try to take undue advantages by any means and do not show any sign of improvement inspite of being given several chances have no right to remain in the organization.

I, therefore, award the punishment of removal from service to Sri M.K. Srivastava w.e.f. 15.6.95 (FN)."

6. The applicant had filed necessary appeal and vide order dated 13.10.2000, the Appellate Authority had held as under :-

"While it cannot be said with certainty that Shri M.K. Srivastava forged the signature himself, it is established beyond doubt that Shri M.K. Srivastava is involved in the forgery and attempting to get his leave regularized by him in a fraudulent manner.

The inquiry has been conducted in a fair manner and during the course of inquiry copies of relief upon documents available have been supplied to Shri M.K. Srivastava to defend his case. There is no reason to doubt either the report of AEE/TM-Shop or the statement of Shri R.Y. Mishra, Sr. Clerk, time-Office. The case has at all levels been dealt with in an impartial attitude and without any bias.

It is also seen from the service record that Shri Srivastava has been habitual of absenting himself un-authorisedly for which he has been penalized in the past.

From the facts brought out in the inquiry, it is established beyond doubt that Shri M. K.

Srivastava, is involved in the forgery and is not a fit person to be retained in service. However, in order to give him benefit of the service already rendered, a compassionate view is taken and the punishment of 'Removal from service' is reduced to compulsory retirement from the date of removal."

7. The applicant has challenged the above orders on various grounds. Respondents have contested the O.A.

8. Arguments were heard and the documents perused. The Counsel for the applicant argued that in a matter of forgery, the opinion of the handwriting expert ought to have been obtained. He has also emphasized that the documents relied upon were not made available, nor the key witness Shri Y.P. Singh allowed to be cross-examined. It has further been argued that the Inquiry Authority had recorded that the matter has also been discussed with ex-E.E.E./PMS Shri Y.P. Singh on telephone regarding certain clarification. This, according to the applicant's counsel, is illegal as the same is behind the back of the applicant without any opportunity to cross-examine Shri Y.P. Singh. It has further been argued by the counsel for applicant that the Disciplinary Authority has taken into account extraneous considerations in as much as the applicant's alleged habitual absence, which does not form part of the charge, has also been considered. The counsel for the applicant further submitted that the Appellate Authority having stated that it cannot be said with certainty that the applicant forged the signature himself, he ought not have held that it is established beyond doubt that the applicant is involved in the forgery. According to the counsel, the view that the applicant cannot be said with certainty to have forged demolishes the entire charge against him.

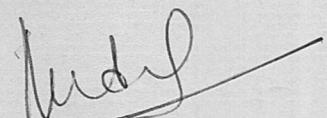
9. Counsel for the respondents has submitted that the applicant had accepted the penalty and he had derived the benefit of receipt of retirement dues paid to him after he was compulsorily retired. As such, according to the counsel for respondents, he is not entitled to any relief.

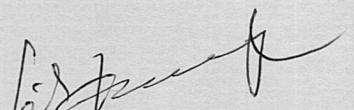
10. We do not agree with the contention of the counsel for the respondents. When charges relate to forgery, ordinarily the opinion of the handwriting expert should have been called for. This having not been done, at least the complainant should have been produced as a witness so that the applicant had an opportunity to cross-examine him. This too was not done. The document namely, leave register, asked for by the applicant was also not made available. In addition, extraneous considerations, not forming part of the charge have weighed in arriving at the decision to penalize the applicant. The above are diagonally opposite to the procedure for conducting disciplinary inquiry. As such, the impugned orders cannot stand judicial scrutiny and therefore, quashed and set aside. The applicant shall be deemed to have been continued in service till his demise and his pay and allowances as on the date of demise should form the basis for payment of terminal benefits. The O.A. is allowed. The respondents are directed to treat the applicant having served as Fitter, Gr.I till 7.5.2005 and the arrears from the date of compulsory retirement till the date of demise shall be worked out and paid to the legal heirs in accordance with law. In addition, the family of the deceased is entitled to the terminal benefits on the basis of the last pay of the applicant as worked out. Any other consequential benefits such as, consideration for compassionate appointment shall also be available in accordance with law. The above relief is granted to meet the ends of justice, taking into account the subsequent

development after filing of the O.A. and in terms of Rule 24 of CAT (P) Rules, 1987.

11. The above direction shall be complied with within a period of four months from the date of communication of this order.

No costs.


A.M.


J.M.

Asthana/