

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 31<sup>st</sup> day of May, 1999

Original application no. 164 of 1992

CORAM: -

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

Ram Swarup S/o Tota Ram,  
Loco Cleaner  
C/o Sri M. P. Sharam, 'Nirmal Nikunj',  
Gaushala Road,  
Shaktinagar, Chandausi-2094112,  
District Moradabad.

(By Sri AK Sinha, Advocate)

..... Petitioner

Versus

1. Union of India through the Divisional Railway Manager, Northern Railway, Moradabad.
2. Sr. Divisional Mechanical Engineer, Northern Railway, Office of the Divisional Railway Manager, Moradabad.
3. Assistant Mechanical Engineer, Office of the Divisional Railway Manager, Northern Railway, Moradabad.

(Sri M.K. Sharam/Sri AK Gaur, Advocates)

..... Respondents

ORDER

By Hon'ble Mr. G. Ramakrishnan, A.M.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the order no. 727-E/D&AR/91-200/RAG-23 dated 10-9-1991 removing the applicant from service passed by Assistant Mechanical Engineer (Respondent no. 3) and letter no. 727-E/D&AR/91-200/RAG-13 dated 16-12-1991 issued by the Divisional Railway Manager, Moradabad communicating the order passed by the appellate authority (Respondent No. 2) rejecting the appeal of the applicant.

2. The applicant in the OA stated the following. Respondent No. 1 issued notification dated 4-11-1987

and 30-11-1987 inviting applications from casual labour/ substitutes borne in the live casual labour register, who had passed VII class and were not more than 28 years and who had put in a minimum of 121 days of service upto 31-10-1987, for engagement as casual labour/substitute loco cleaners in grade Rs.750-940. The applicant who claimed to have worked prior to 4-10-1978 and after that for 137 days as casual labour and fulfilled the other two conditions submitted his application alongwith supporting documents to the Station Master, Jargao for onward transmission to the Office of Divisional Railway Manager, Moradabad, Northern Railway. Applicant enclosed with his application certificate issued by the Station Master, Hafizpur on 14-7-1987 in proof of his working there from 5-5-1986 to 14-7-1986 (71 days) certificate issued by the Station Master, Misrikh, Tirth Station dated 15-7-1980 certifying his working as Hot Weather Waterman from 20-5-1980 to 14-7-1980, in addition to certificate in proof of his having studied upto VIIth Standard. According to the applicant, his application was received in the office of the respondents on 18-1-1988 and was called to report to the Office of respondent on 12-9-1988, with School Certificate for proof of age, casual labour card and two good character certificates. After medical examination the applicant was directed to be engaged as substitute loco cleaner on 17-11-1988. Further the applicant was screened for regularisation as loco cleaner on 10-11-1989 by a Committee of three Asst. Officers. Without declaring the result of the screening, on 21-9-1990, respondents served a major penalty charge sheet on the applicant that the applicant submitted false and fictitious certificate regarding working under SM, Misrik Tirth Station during the period 20-5-1980 and 14-7-1980 as



casual labour. Applicant denied the charges and after DAR enquiry the applicant was removed from service by and order of respondent no.3 dated 10-9-1991. The applicant <sup>preferred</sup> put forward an appeal to the appellate authority respondent no.2 who rejected the same by a letter of respondent no.1 dated 16-12-1991. Applicant stated that the respondents are estopped by a promissory estoppel to issue charge sheet and remove the applicant from service after about 2 years of successful working which appointment was done after thorough enquiry and verification of records and twice verifying the same during the course of screening. According to the applicant condition of working <sup>for 121 days</sup> laid down in the notification was contrary to the rules. The DAR enquiry was vitiated by the non-examination of Sri M.L. Gupta, Station Master Misrikh Tirth to prove the authenticity of his certification. The enquiry officer had relied on the attendance register which was an unreliable document. According to the applicant he was not supplied the relevant documents. Applicant stated that the disciplinary and appellate authority had not given him a personal hearing. Further it was stated that the punishment of removal from service was too severe for the offence of the applicant even if it is accepted to be proved. Applicant sought following reliefs:-

- (a) An order or direction in the nature of writ of Certiorari quashing the appellate order dated 16-12-1991 (A-1) and the order of removal dated 10-9-1991 (A-2) with all consequential benefits to the applicant;
- (b) An order or direction in the nature of writ of Mandamus commanding the respondents to declare the result of the screening held on 10-11-89 with consequential benefits flowing out of it;

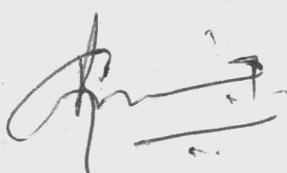


(c) Pass any other or further order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;

(d) Award cost of the petition.

3. Respondents filed the CA and resisted the claims of the applicant. According to the respondents, the applicant had produced forged certificate in order to gain eligibility by illegal means which was proved false during the fact finding enquiry and the working period from 20-5-80 to 14-7-80 was found to be incorrect during the course of D&A enquiry. Respondents averred that all relied upon documents were supplied to the applicant during the course of enquiry and further the applicant had also inspected the documents and also all relevant and available documents were also supplied to the applicant. Respondents stated that the applicant in collusion with Station Master, Misrikh Tirth had obtained the working certificate and in this view of the matter it was not necessary to examine-cross-examine Sri Gupta. Respondents claimed that the enquiry was legally conducted and there was no irregularity. According to the respondents successful working of the applicant for about two years on a post which had been ~~reserved~~ <sup>secured</sup> by means of playing fraud did not confer any right upon the applicant to be retained in service when it was ~~deducted~~ <sup>gone</sup>. They stated that no personal hearing was demanded in the appeal by the applicant and, therefore, was not granted. They denied that there was any violation of principles of natural justice. Further the respondents stated that all the grounds taken by the applicant are not tenable in law and the OA was devoid of merits and was liable to be dismissed as such.

4. Applicant filed rejoinder affidavit and reiterated the pleas taken in the OA.



5. Heard the learned counsel for the parties. We have given careful consideration to the submissions made by the learned counsel and the rival pleadings and have perused the whole record.

6. Through this OA the applicant seeks to quash the orders of the disciplinary authority and appellate authority passed by them arising out of the charge sheet issued to the applicant. As per the law laid down by the Apex Court, Courts/ Tribunals cannot act as an appellate authority over the departmental appellate authority when exercising the powers of Judicial Review. It has to be seen whether "all things taken together whether the delinquent officer/employee had or did not have a fair hearing" - as laid down by Hon'ble Supreme Court in State Bank of Patiala Vs. S.K. Sharma, reported in (1996) 3 SCC 364.

7. Applicant has advanced of not calling Sri ML Gupta, S.M. Misrikh Tirth, Station Master <sup>as</sup> one of the grounds in this connection. Applicant has stated Sri ML Gupta who had issued the service certificate to the applicant should have been called as a witness in the enquiry. Respondents case is that the applicant had obtained the working certificate in <sup>Shri Gupta</sup> collusion with the said Sri S.M. Misrikh Tirth. In the charge Sheet issued to the applicant the list of documents and list of witnesses through which/whom the charge is proposed to be proved as given. From the copy of the charge sheet enclosed as Annexure-A-13 to the OA we find the name of Sri Gupta is not included in the list of witnesses. Therefore, if Shri Gupta had not been examined from the prosecution side it cannot be termed as illegal. Nothing had been brought <sup>as to why not</sup> by the applicant <sup>that he had called</sup> Sri Gupta as defence witness and ~~he was~~ <sup>Shri</sup> examined. Therefore, we do not hold that the LAR enquiry was vitiated on this ground.



8. Another ground advanced by the applicant was that the respondents committed grave illegality in not giving personal hearing to the applicant before imposing the punishment of removal from service and again before deciding the appeal. According to the procedure laid down in the Railway Servants (I&A) Rules, 1968, an enquiry shall be conducted as per procedure laid down therein before imposition of a major penalty. Nowhere it has been laid down that a personal hearing should be given. Applicant had also not claimed that he asked for a personal hearing in the appeal and the same was not given and the appellate order was passed. Respondents have averred that there was no request for personal hearing. In the light of the above this ground fails.

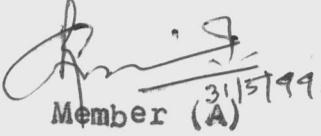
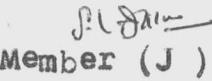
9. Another ground advanced by the applicant is non-supply of additional documents which were relevant to the applicant during the course of enquiry. Respondents denied the same and averred that all the relied upon documents were furnished to the applicant during enquiry. Further, they stated that the applicant had also inspected the documents and all relevant and available documents were also supplied to the applicant. We also find from enquiry report in the original file as well as the copy annexed as Annexure-A-15 with the OA that the photocopies of the documents were given to the applicant .(Item 8 of the first Page and proceedings on 24-8-91). Therefore, this ground also fails.

10. We do not consider the other grounds relevant to the main relief claimed. Therefore, they are rejected.

11. In the result the applicant is not entitled to



any of the reliefs sought and the OA deserves to be dismissed. We dismiss the OA accordingly with no order as to costs.

  
Member (A) 31/5/99.   
Member (J)

Dubane/