

7

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 07th day of November 2001.

Original Application no. 769 of 1994.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member

Brijesh Kumar,
S/o Shri Ram Kishun,
ex Porter Block Hut 'A',
Northern Railway, Allahabad.
R/o 205 K/Lg Kasari Masari,
ALLAHABAD.

..... Applicant

By Adv : Sri KS Saxena

Versus

1. The Union of India (Through: General Manager,
Northern Railway, Baroda House,
New Delhi.)
2. The Divisional Railway Manager,
Northern Railway,
ALLAHABAD.
3. The Divisional Operating Manager (P),
Northern Railway,
Allahabad.

..... Respondents

By Adv : Shri AV Srivastava

O R D E R

Hon'ble Mr. Justice RRK Trivedi, VC.

By this O.A. under section 19 of the A.T. Act, 1985, the applicant has challenged order of punishment of removal dated 8.6.1993 (Ann. 2) and order of appellate authority dated 11.2.1994 (Ann. 1).

2. The facts giving rise to this O.A. are that the applicant was engaged as substitute Porter in 1988. He was served with the memo of charge^s dated 19.11.1992. The charge against the applicant was that in the year 1988, he submitted fake certificate signed by Shri DP Singh, the then CHC/ALD, wherein it has been certified that the applicant had worked as casual labour for 200 days w.e.f. 11.9.1977 to 8.1.1981. The working period of the employee could not be certified for want of any relevant document. Sri DP Singh also could not produce record in support of the certificate given by him. Only way for verification of the working days of Shri Brijesh Kumar, was left to check paid vouchers. Senior DAO/ALD was requested to check, if the name of the applicant existed in the paid voucher for the relevant period. Senior DAO/ALD on 16.9.1991 ^{intimated} ~~initiated~~ that all the paid vouchers for the period mentioned has been distroyed being time barred except of December 1980 and January 1981 but the name of the applicant does not exist in the said vouchers. As such the working certificate submitted by the applicant was doubted to be bogus. He further submitted an affidavit on 20.7.1988 stating that his date of birth is 8.3.19⁵⁹ and he did not study in any institution, while at the time he was engaged he was already graduate and in High School

3.

certificate his date of birth was shown as 8.3.1960. The applicant submitted his reply and contested the charges. The Enquiry Officer, however, found the charges proved against the applicant and submitted a report. The disciplinary authority ~~agreed~~ with the Enquiry Report and passed the order of removal of the applicant from service on 8.6.1993. The order was confirmed in appeal by order dated 11.2.1994. Learned counsel for the applicant has challenged the order of punishment on three grounds. His first submission is that the disciplinary proceedings contemplated under rule 3 of Railway Servant (D&A) Rules 1968, were not applicable to the applicant as he was a casual labour and the entire proceedings stands vitiated ~~without~~ being ^{without} any authority. For the aforesaid submission, he has placed reliance on rule 3(c) of the aforesaid rules.

3. Shri AV Srivastava, learned counsel for the respondents however, submitted before us that Railway Board by a notification no. E(NG) 60 CL-13 dated 13.5.1965 (ER 5297) clarified that the casual labours are not covered by D&A Rules 1968, but when such casual labours attained temporary status, these rules become applicable to them, similar ^{as} ~~with~~ the case of substitute. It is not disputed that the applicant was engaged as substitute. Thus rule 3 was fully applicable. Further no such objection was raised at any stage before the ~~authorities~~ ^{of} this nature, questioning ^{as} ~~legality~~ of the proceedings.

4. The second submission of learned counsel for the applicant is that orders passed are not speaking orders and thus they are liable to be set aside. We have considered this submission. It is not disputed that the enquiry report

10

was submitted to the applicant which contained detailed discussion of the evidence and findings on each of the points. While passing order dated 8.6.1993, ^{disciplinary authority} has broadly discussed the case and agreed with the enquiry report and passed order of punishment. The appellate authority also noticed the facts and the charge of misconduct against the applicant and then after showing agreement of the order already passed, dismissed the appeal. In the circumstances it is difficult to say that the orders are not speaking order. The departmental authorities are not expected to write elaborate judgment like Court and Tribunal. While considering the legality of the orders, only this is to be seen that they have applied their mind to the facts of the case. In the present case, we find that both disciplinary authority as well as appellate authority passed orders after taking into consideration the entire facts of the case.

5. The third submission of the learned counsel for the applicant is that documents were not supplied to the applicant and thus, he was denied opportunity to defend himself. We have considered this plea. After the applicant was served with the enquiry report, he filed a representation dated 28.5.1993 (Ann. A-7) against the same. In this representation in para 2 only he said that necessary documents were not supplied, neither he has named the documents nor he has shown how the prejudice has been caused to him. In para 3 only he has said that originals were not shown to him at any stage, hence, the documents given to him were not authentic. The plea was thus vague and uncertain, before appellate authority

5.

the applicant has not taken this plea at all. We have perused the memo of appeal dated 8.7.1993 (Ann. A-8). Thus the plea raised at this stage, was ~~vacant~~ and in our opinion the applicant cannot raise the said plea at this belated stage. While exercising power of judicial review, this Tribunal has to see the illegality committed by the authority in appeal. If the plea was ~~not~~ raised before the ~~appellate~~ disciplinary authority, the applicant cannot say that the order is illegal by raising new facts at this stage.

6. In view of the discussion made above, we do not find any merit in this O.A. The charge of misconduct against the applicant was fully proved that he procured appointment on the basis of forged documents and also filed an affidavit which ~~was~~ to his knowledge contained false averments. The OA is devoid of merit and dismissed accordingly.

7. There shall be no order as to costs.

Member-A

Vice-Chairman

/pc/