

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.608 OF 1995
ALLAHABAD THIS THE 21TH DAY OF FEBRUARY, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN
HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

Niyaz Ahmad,
aged about 34 years,
S/o Shri Abdul Gaffar Siddiqui,
resident of 1,
Near Jeewan Shah Dargah,
Civil Lines, Jhansi.

.....Applicant

(By Advocate Shri M.P. Gupta)

Versus

1. Union of India,
through the General Manager,
Central Railway,
Bombay V.T.

2. The Divisional Railway Manager,
Central Railway,
Jhansi.Respondents

(By Advocate Shri P. Mathur)

ORDER

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

By this O.A. Filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the order dated 30.08.1994 (Annexure-1) by which the applicant was removed from service. ~~.....~~ The order was challenged in appeal and the appeal was dismissed by order dated 07.04.1995. A copy of the order has been filed as Annexure-2.

2. The Facts of the case are that, the applicant was serving as Monthly Rated Casual Labour (M.R.C.L.) in Central



Railways at Jhansi. The applicant filed a case in Labour Court, which was registered as 88/88 before Central Government Industrial Tribunal, Kanpur. The petition was filed by ^{the} applicant Niyaj Ahmad, under Industrial Disputes Act, 1947 ^{u/s} section 33 c(2).

3. The grievance of the applicant was ^{against} withholding of the wages to the extent of Rs.21300/-. In this connection a defence was raised by the respondents that the applicant got himself engaged on the basis of fake Casual Labour Card. The Presiding Officer, however, in his order dated 02.03.1989, observed that if the appointment was ^{obtained} ~~on~~ on the basis of fake casual labour card, an enquiry should have been held against the applicant and he should have been punished for this mis-conduct.

4. In view of the observations made by Presiding Officer in the above order, the applicant was served with a memo of charge dated 13.10.1992 and 4.11.1993. The charge against the applicant was that according to Central Railway letter No.P/271/4/EG dated 10.04.1986, the service card no.253278 is fake as the applicant was not engaged in any department of Jhansi Division, as casual labour, ^{as} ~~card of N.R. S. is~~ a substitute and the applicant played a fraud on the administration and committed a serious mis-conduct. The ~~learned counsel for the~~ applicant submitted his reply on 28.06.1994 in which he has stated that against the order of the Labour Court he has filed a writ petition in the High Court which has been admitted and these proceedings may be stayed. He has also stated that if the disciplinary proceedings are continued, it shall amount to contempt of court, and he will have to initiate proceedings of defamation.

An Enquiry Officer was appointed who recorded evidence, applicant participated in the enquiry, cross examined the witnesses and the enquiry officer submitted his report. The conclusion was that the applicant Niyaz Ahmad ^{had} deposited the alleged card and got appointment which is fake, and he has deceived the administration, but he also observed that for a long time the action was not taken.

~~Learned counsel for~~ ^{W^{as}} the applicant ~~was~~ given full opportunity of defence. The Disciplinary Authority ^{agreed} ~~agreed~~ with the enquiry report passed the order of punishment which has been upheld in appeal. The Appellate Authority decided the appeal with following order:-

"Interviewed the delinquent employee on 13.03.1995. In the personal hearing as well as in appeal made by the applicant, no tangible and convincing evidence could be furnished by the delinquent employee regarding the genuineness of the Casual Labour Card. As such the punishment imposed by ASTE/CLS to the delinquent employee stand good."

5. We have heard learned counsel for the applicant at length. Learned counsel for the applicant submitted that the applicant in his memorandum appeal raised several grounds, challenging the order of punishment passed by the Disciplinary Authority. However, the Appellate Authority has dismissed the appeal by a short and cryptic order without examining the detailed grounds raised in the memo of appeal. The learned counsel for the applicant has placed before us ground nos 2 to 9. We have perused the grounds and in our opinion, the Appellate Authority has not decided the appeal in accordance with law. The main contention, of the applicant ^{was} ~~is~~ that Original Service Card No.253278, which was alleged to be fake and also the letter dated 10.04.1986 on which basis the chargesheet was submitted to the applicant, ^{was} ~~not~~ produced before the Enquiry Officer. This fact was corroborated by the report of the Enquiry Officer also that

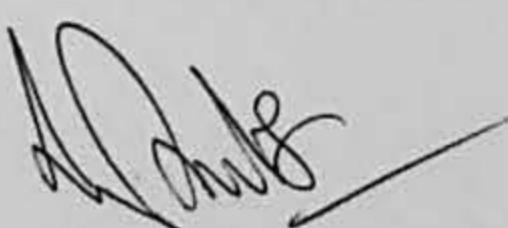


Original documents were not produced before him. This main aspect of the case, thus, has not been decided by the Appellate Authority. In the circumstances, the order of the Appellate Authority cannot be sustained.

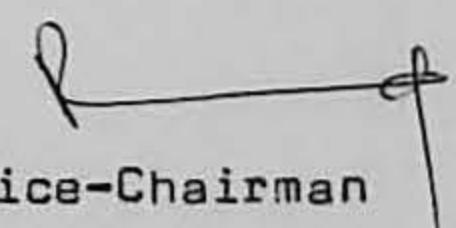
6. In our opinion, the case may be remitted back to the Appellate Authority for deciding afresh in accordance with law expeditiously.

7. For the reasons stated above, this O.A. is allowed in part. The appellate order dated 07.04.1995 (Annexure-2) is quashed. The appeal of the applicant shall stand restored before the Appellate Authority. The Appellate Authority ^{and} shall decide the same in accordance with law in the light of the observations made above, within a period of three months from the date a copy of this order is filed.

8. There will be no order as to costs.



Member-A



Vice-Chairman

/Neelam/