

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO.
313/90
T.A. NO.

DATE OF DECISION 15-9-94

Mr. Rajibhai Mohanbhai **Petitioner**

Mr. K.K. Shah **Advocate for the Petitioner (s)**

Versus

Union of India and Others **Respondent**

Mr. N.S. Shevde **Advocate for the Respondent (s)**

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The Hon'ble Mr. K. Ramamoorthy **Member (A)**

The Hon'ble Dr. R.K. Saxena **Member (J)**

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Raijibhai Mohanbhai
 C/o K.K.Shah
 Advocate
 3, Achalayatan Society,
 Div. II
 Nr. Memnagar Fire Station
 Navrangpura Ahmedabad.

Applicant.

Advocate Mr. K.K. Shah

Versus

1. Union of India
 Notice to be served through
 The General Manager,
 Western Railway, Churchgate,
 Bombay.

2. Regional Engineer (V)
 Divisional Office,
 Western Railway, Baroda.

3. Assistant Engineer (II)
 Western Railway, Ahmedabad.

Respondents.

Advocate Mr. N.S. Shevde.

JUDGMENT

In

Date: 15-9-94

O.A. 313/1990

Per Hon'ble Dr. R.K. Saxena

Member (J)

To challenge the impunged order of punishment dated 1-12-1987, Annexure A and the appellate order dated 7-7-1989, Annexure A-1, has this application been filed by Shri Raijibhai Mohanbhai. The factual matrix of the case is that the applicant at the time of impunged order of punishment, was serving as temporary Khalasi in the Western Railways and according to the respondents the applicant got job by producing a forged service-card of his having worked as casual labourer

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in Kota Division. When this fact came to the notice of the department, a preliminary inquiry was conducted and in that inquiry, the applicant had produced the said service card and had also admitted that the card was — purchased by him after paying the amount of Rs. 200/- The name and the parentage of the applicant were substituted in place of the original card holder. He was then charge-sheeted on 10-8-1987, Annexure A-2. The inquiry officer was also appointed and the inquiry proceeded on in usual way. The inquiry officer, however, recorded the statement of the applicant alone and submitted his report to the Disciplinary Authority which passed the impugned order of removal from service, on 1-12-1987, Annexure A-1. The applicant preferred an appeal before the Appellate Authority which rejected the same vide order dated 7-7-1989, Annexure A-1. It was thereupon that this application challenging both the orders of the Disciplinary Authority as well as of the Appellate Authority, has been filed.

2. The contention of the applicant is that the entire disciplinary proceedings are vitiated because the charge-sheet is vague inasmuch as that neither any date of mis-conduct has been shown nor were the names of the witnesses and the documents which were to be relied upon by the department, disclosed. It was further contended that the charge-sheet disclosed possession of a bogus service card by the applicant and having misused the same but nothing was disclosed as to how the card was bogus and what was the mis-use thereof.

3. The respondents contested the case and came out with the plea that there was ban on the fresh recruitment of the casual labourers. It was, therefore, decided that those casual labourers who were previously engaged and were retrenched, may be allowed to be taken on job, if they produce the service card of the period of their previous job. It is averred that the applicant procured the service-card of some other person after paying an amount of Rs. 200/- as was disclosed by him, and his name and parentage were substituted. In this way, the service-card was forged by the applicant and it was used as genuine knowing it fully well that the said card was fictitious one. The plea of the respondents is also that since the applicant had worked in the department, charge-sheet was served, and inquiry proceeded with. So far as the omission of the names of the witnesses and the documents in the charge-sheet is concerned, it is contended on behalf of the respondents that the entire case ^{is &} based on the service card which was produced by the applicant himself, and the statement made by the applicant during the preliminary inquiry and ~~these~~ facts were in the notice of the applicant. ^{and} Therefore, there was no necessity of having mentioned them in the charge-sheet. The respondents have also come forward with the case that the proper procedure of inquiry was adopted and the punishment was awarded legally after giving an opportunity of hearing to the applicant. The respondents also averred that there was no ground on the basis of which the inquiry proceedings may be held illegal or void.

4. We have heard the learned counsel for the applicant and the respondents, and have given careful thought to the facts and legal position of the case.

5. The first question arises whether the appointment of the applicant was legal. The plea, as is disclosed above, of the respondents is that the applicant procured the service-card posing himself to be the erstwhile casual labourer of the Railways. This aspect has neither been accepted nor denied before us by the applicant. On our query from the learned counsel for the respondents as to why the matter was not reported to the Police, it was replied that the department thought it proper to initiate Departmental Proceedings against the applicant and therefore, no report was made to the Police. It appears that there is a racket of seeking job in the Railway- Department by adopting such tactics and whenever ~~this~~ facts came to the notice of the department, they appear to have been ignored. In our opinion, the respondents should have ^{such} ~~instituted~~ high ranking Inquiry in the matter in order to eliminate such kind of racket. Still it could be done to put up the clean image in the public.

6. The respondents, in the charge-sheet, have disclosed the applicant in the service of the Railways and the said fact has also been mentioned in the written statement filed by them. Also it is true that even if a person secures employment by production a forged or fictitious document and works for some time in the department, the only course is to initiate proceedings and after the charges are established, the punishment of removal or dismissal may be awarded. In view of this legal position, it appears that the course adopted by the respondents to serve the charge-sheet on the applicant was correct. It is, however, surprising that in the charge-sheet, the date or approximate ^{time &} ~~order~~ of

securing job has not been mentioned. Similarly, list of the witnesses and the documents on which reliance is going to be placed by the respondents, is also missing. Even if preliminary inquiry has been conducted and the statement of the delinquent employee admitting the guilt has been recorded, it does not mean that the same shall not be specified and mentioned in the charge-sheet. It is of primary necessity that the nature or manner of mis-conduct should be specified and the documents or the witnesses who are required to support, should also be mentioned. The manner in which the charge-sheet shall be drawn is mentioned in sub-rule (6) of Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968 (herein after referred as Rules). It reads :

" Where it is proposed to hold an inquiry against a Railway servant under this rule and Rule 10, the disciplinary authority shall draw up or cause to be drawn up —

- (i) the substance of the imputations of misconduct or mis-behaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of mis-conduct or misbehaviour in support of each article of charge which shall contain :
 - (a) a statement of all relevant facts including any admission or confession made by the Railway servant,
 - (b) a list of documents by which, an a list of witnesses by whom, the articles of charge are proposed to be sustained."

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The reading of this sub-rule(6) of rule 9 clearly indicates that besides the substance of imputations of misconduct or misbehaviour, it is also necessary to give the statement of all relevant facts including any admission or confession made by the Railway servant. Apart from it, the list of documents by which and the list of witnesses by whom the articles of charge are proposed to be substantiated, must be disclosed. The respondent definitely violated the mandate of the Rules. In this light, the charge-sheet served upon the applicant shall have to be held vague and charges shown without evidence. The Hon'ble Supreme Court in **Sawi Singh Vs. State of Rajasthan 1986 (3) SCC 454**, held that if the charges were vague, it was difficult to meet them fairly by the delinquent. It was further observed by the Hon'ble Supreme Court that the charges involving consequences of termination of service, must be specific and there must be investigation into the charges in accordance with the principles of natural justice whenever the departmental inquiry is entailing adverse or penal consequence like loss of job which means loss of livelihood. The charges being vague, the delinquent employee shall not be in a position to defend himself fairly and it would be in violation of principles of natural justice and thus any punishment based on such charges cannot be sustained in law. In this connection, our attention has also been drawn about the vagueness of the terms 'bogus' and 'mis-use' which have been adopted in the charge-sheet. The learned counsel for the applicant argued that the charge-sheet speaks about "bogus" service-card and its "misuse". According to him, these terms are ambiguous and vague. The term "bogus" means, according to the Lexicon Webster

Dictionary, — Counterfeit; spurious; sham; pretended; and according to the Collins Cobuild English Language Dictionary "bogus" means false or is not done according to the laws or rules; used specially of something that someone is pretending is real genuine or valid. Thus mentioning the service card as bogus does indicate that the department wanted to convey to the applicant that the order was not genuine but it was pretended by him to be genuine. It is true that mere writing the service card as bogus will not itself be proved as forged one unless the evidence to that effect was produced by the department. The learned counsel for the applicant also objected to the term "misuse". The meaning of the term "misuse" is to use improperly; to use to a bad purpose, according to the Lexicon Webster Dictionary. According to Collin Cobuild English Language Dictionary, it means use in ~~an~~ incorrect, improper or careless manner or for a wrong or a dishonest purpose. The adoption of word misuse in the charge-sheet does not convey the meaning which has been developed during the arguments by way of showing that the service card was used by the applicant as genuine one. Any way, we have already expressed our view that the charge-sheet suffers from vagueness.

7. Not only this that the charge was vague and incomplete but also the copies of the documents and of the statements were not furnished to the applicant and he had been writing for the same soon after the charge-sheet was served on him. It is ascertainable from the Annexure A-3 which was written on 4-9-1987. Various

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letters of correspondence about seeking copies of the documents and list of the witnesses ~~are~~ also brought on the record through Annexure A-4 to A-7. The repeated request of the applicant for obtaining copies of the documents and list of the witnesses and non-supply thereof at the earliest opportunity is also denial of fair play and violation of the principles of natural justice. The learned counsel for the respondents argued that the copy of the statement of the applicant which was recorded during preliminary inquiry was supplied to him subsequently. As a matter of fact, the entire evidence which is going to be relied upon must be disclosed in the charge-sheet and furnished to the delinquent employee at the earliest opportunity else he (the delinquent employee) shall not be in a position to prepare his defence. Here in this ~~case~~ ^{matter}, the entire case is based on the service-card which is of course stated to have been produced by the applicant himself during preliminary inquiry but the copy of the same was never given to him on the ground that the contents of the card were known to the applicant. It cannot be a valid ground. Whether it is independent evidence or a confessional statement of the delinquent employee himself, ^{if} ~~and~~ reliance has been placed by the department, ^{if} ~~had~~ ought to have been mentioned and copies supplied to the delinquent employee. Non-compliance of this procedure goes against the principles of natural justice and any order passed thereon ~~may~~ may be vitiated.

8. In this case, the inquiry officer has adopted a strange and unique method of recording the statement of the delinquent employee in the ^{very} ~~right~~ beginning of the inquiry.

No other evidence was gone through and no other witness was examined in support of the charge. The delinquent employee cannot be said to be a witness of the charge. The inquiry officer ought to have recorded the statements of the departmental witness^s in support of the charge but it was not done. The learned counsel for the respondents argued that there was no evidence other than the statement of the delinquent employee himself and there was ^{no} ~~no~~ necessity of recording the statement of any departmental witness. We are not able to persuade ourselves by this argument. Whole case of the department is that the applicant had procured a forged or fictitious service card and got job with the respondents. There could have been evidence to the effect that actually no such service card was ever prepared in the name of the applicant but the same has not been done. There could have been production of rules or evidence that no person who was not a erstwhile casual labourer, could have got a job of Khalasi but no such evidence has been brought on record. It appears that the respondents were mainly concerned with the so called confessional statement of the applicant and never thought of bringing any evidence in support of the charge. Even if the statement of the applicant was to be proved, the statement of the person who had recorded the said statement should have been examined. The applicant, in the statement which was recorded by the inquiry officer, came with the plea, that he had worked as casual worker in Kota Division. It was very necessary for the respondents ~~to~~ department to have adduced evidence in support of the charge. By not recording the statement of the witnesses in support of

the charge and by jumping over the stage of recording the statement of the applicant, is again in violation of principles of natural justice as — well as the Rules. In this connection, sub-rule (12) of Rule 9 may be looked into which specifies various stages of recording evidence. It reads;

" The inquiring authority shall, if the Railway servant fails to appear within the specified time or refuses or omits to plead, require the 'Presenting Officer', if any, to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in sub-rule (6)."

The perusal of this sub-rule (12) of Rule 9 shows that it is mandatory on the part of the inquiry officer to have ^{first} recorded the evidence which is proposed to prove the articles of charges against the applicant. In this view also, the procedure has been found defective and therefore, the impugned orders of punishment and of appeal are not sustainable under law. For these reasons, the impugned orders of punishment by the Disciplinary Authority as well as by the Appellate Authority cannot be upheld legal and they are therefore, quashed.

10. On the quashment of the order of punishment, the natural course flows is the reinstatement of the delinquent employee. The question, however, arises if the applicant should be allowed back-wages. Not only that the entry of the applicant in the service on the basis of service card, which according to the respondents, was not genuine, was the bone of contention and it remains unresolved. For these reasons, as well as for the reason, that the applicant did not work, we conclude that he is not entitled to back-wages. The application is disposed of accordingly. No order as to costs.



Dr. R.K. Saxena

(Dr. R.K. Saxena)
Member (J)



K. Ramamoorthy

Member (A)

*AS.