

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 329/90

~~T.A. NO.~~

DATE OF DECISION 13th November 1997

Joseph Suleman Petitioner

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

Versus

Union of India & Others Respondent

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

CORAM

The Hon'ble Mr.

Mr. V. Radhakrishnan, Member (A)

The Hon'ble Mr.

Mr. T.N. Bhat, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

Joseph Suleman
C/o. Kiran K. Shah
Advocate
3, Achalayatan Soc. Div. II
Nr. Memnagar Fire Station
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) Sr. Divisional Engineer (III)
Western Railway
Baroda.
- 3) Assistant Engineer
Western Railway
Anand.

Respondents

Advocate: Mr. N.S. Shevde -

JUDGEMENT

O.A. NO. 329/90

Dated 13th November 1997

Per Hon'ble Mr. V. Radhakrishnan, Member (A):

The applicant in this O.A. was working as Temporary Status Casual labourer under Respondent No.3 for about sixteen years. He was issued a chargesheet dated 26.8.88/8.9.88 - Annexure A. The charges were as follows:-

" You have produced bogus/spurious service card in your favour and got job as TS G/Man under CPW(R) Anand. On the basis of above service card. Thus you have cheated the Railway Administration for securing employment in Railway".

An Inquiry Officer was appointed. He submitted the Inquiry Report. The applicant was found guilty of the charge and he was awarded penalty for removal

from service- Annexure A-1. The applicant filed an appeal against the punishment- Annexure A-9. This was rejected by the Appellate Authority. Being aggrieved by the rejection of his appeal, the applicant has approached the Tribunal praying for the following reliefs:-

- (A) This Hon'ble Tribunal may be pleased to quash and set aside the chargesheet Annexure 'A' and the order of the Disciplinary authority and appellate authority which are annexed at Annexure A-1 & Annexure A-2 respectively by holding it as null and void and illegal, bad in law in utter violation of principles of natural justice and fairplay and hence requires to be quashed and set aside and the respondents be directed to reinstate the applicant with all consequential benefits.
- (B) This Hon'ble Tribunal may be pleased to allow this application with costs.
- (C) Any other order or direction may be deemed fit in the interest of justice may be passed.

The applicant has challenged the action of the respondents on several grounds. First relates to the question as to whether the allegations against him on his misconduct can be covered under the Railway Servants (Discipline and Appeal) Rules because the event happened before he was appointed as a Railway servant. Secondly, the chargesheet was issued by the Assistant Engineer who is not authorised to issue

the same as he is only Group B Junior scale Gazetted Officer and he cannot impose major penalty of removal from service as per Railway Servants (Discipline & Appeal) Rules. Thirdly the chargesheet was issued mechanically on instructions from General Manager- Annexure A-5 to terminate the services of casual labourers. Fourthly, the chargesheet issued was vague. It is not sufficient to indicate the intention to the charged officer regarding his alleged misconduct. Fifthly, the prosecution is responsible for proving the charge. They have not been able to do so. Sixthly the Inquiry Officer did not examine any prosecution witnesses. The P.W.I.(C) Bhatia who had allegedly issued the Service Card was not called and examined. Further in list of witnesses no one else is mentioned as witness. Further the applicant was not supplied documents even though demanded by him. Moreover, there was no Presenting Officer on the respondent's side to substantiate the charges. Two Defence Witnesses were examined after the proceedings, the order imposing the penalty and the Inquiry Report was served on him. The Appellate Authority while considering the appeal of the applicant did not consider the various points raised by him and mechanically confirmed the orders of Disciplinary Authority.


The respondents have contested the contention of the applicant. They have said that the service

card produced by the applicant purportedly issued by the P.W.I. (C) Bhatia was verified from the Office of P.W.I.(C) Jamnagar who was having the records of Bhatia's Office and it was since closed. The P.W.I.(C) Jamnagar informed on 6.1.89 that on verification of old records of P.W.I.(C) Bhatia like TI Register, Attendance Register etc. it was found that no such person named Joseph Suleman was recruited as Male Beldar (MB) and no such service card was issued to the applicant. It was also stated that the rubber stamp used on the Service Card produced by the applicant did not tally with that of P.W.I. (C) Bhatia and the respondents came to the conclusion that the service card was bogus, spurious and forged and fabricated by the applicant. The respondents also denied the contention of the applicant that P.W.I. (C) Bhatia had given any instructions to the applicant to report to Baroda for further duty.

bl
The respondents also denied that the applicant was working under P.W.I. (C) Bhatia or Works Manager Pratapnagar in 1974. They say that the applicant worked only for a few days in May and June 1974 under Works Manager Pratapnagar and thereafter his services were as shown in the card. The applicant was not granted temporary status in 1974. As the applicant had never worked under P.W.I.(C) Bhatia, the service card produced by him to that effect is bogus. According to them the applicant was engaged under P.W.I.(R), Anand on 21.7.86 as temporary status

bl

Gangman. They have denied the allegation that respondents had taken action against the applicant on the basis of instructions received from the General Manager. Each Unit of a Division was required to take action to verify service cards produced by the Casual Labourers and persons who had produced bogus service cards were to be punished. They have stated that action against the applicant was taken as per Railway Servants' (Discipline & Appeal) Rules. Inquiry was conducted as per rules and during inquiry it was found beyond doubt that the applicant had secured a job on the basis of the card for the period shown is bogus, as no such card was issued by P.W.I.(C) Bhatia. List of documents relied upon and the list of witnesses were already mentioned in the chargesheet. C.P.W.I. (R) Anand was shown as witness. Documents were supplied to the applicant. The casual labour service card issued by the P.W.I. (C) Bhatia was available with the Disciplinary Authority. This document was not supplied to the applicant but he was given liberty to inspect the same. The charges framed were not vague but specific. The inquiry letter issued by P.W.I.(C) Jamnagar stated that no card as produced by the applicant was issued by that office and it was also offered to give a copy of the letter to the applicant but applicant refused to accept the same because it was not mentioned as List of documents in the chargesheet. The Statements



of Depositions were recorded by the Inquiry Officer and two defence witnesses were also examined by him and enough time was given to him for submitting his final defence statement. Thereafter the Inquiry Officer submitted the report to the Disciplinary Authority and held the applicant guilty of charges and the Disciplinary Authority issued penalty of removal from service. The applicant has not produced any witnesses to substantiate his claims that he had worked under P.W.I.(C) Bhatia. So far as the appeal of the applicant is concerned, the Appellate Authority gave a personal hearing to the applicant alongwith his Defence Counsel in May 1990 and passed a speaking order rejecting the appeal after going through all the documents is correct. They have also stated that the charge against the applicant is fully proved in the Inquiry. The applicant was given enough time to prepare his defence. There was no delay in deciding the appeal. They denied that entire inquiry as well as the orders passed and issued were free from bias, malafides or victimisation. They have denied the allegation that the inquiry was merely an eye-wash. The applicant has filed a rejoinder in which he more or less repeated the arguments given in the O.A.

During the arguments Mr. K.K.Shah, learned advocate for the applicant mentioned the following points:-

He stated that the respondents issued the chargesheet on receipt of the instructions of General Manager to terminate the services of the casual

labourers. There were no criminal complaints lodged against the applicant about cheating nor any vigilance or CBI Inquiry was initiated. The chargesheet is very vague about misconduct committed by the applicant and when the chargesheet is vague, the allegations cannot be met by the charged officer. On this account it requires to be quashed. In this connection he quoted the judgement of the Hon'ble Supreme Court- 1986(3) SCC 454 Sawai Singh V/s State of Rajasthan.

Further he stressed on the point that no prosecution witnesses were examined. P.W.I. (C) Bhatia was the office which issued the casual labour service card. Because the office was closed, P.W.I. (C) Bhatia was not called as witness. He should have been called as witness to prove or disprove about the genuineness of the card. The listed out witness is only P.W.I.(R) Anand but even that person was not called to substantiate the charges. In support of his arguments he has cited the following judgements:-

- (1) 1990 (12) ATC 353 Para 5 and 6, K.Chalamaiah
- (2) 1989 ATR page 29 para 10 to 20

Dr. O.P.S. Luthra

- (3) 1990 (12) ATC 350 para 5 Trindha Panda
- (4) 1990 (14) ATC 99 para 7, V.D.Joseph.

He further stressed on the point that the applicant was not supplied the documents requested by him and this lacuna vitiated the inquiry. He had shown the following cases in support of his arguments:-

- (1) 1987 (2) ATC 205 para 4 to 6

Pattipaban Ray V/s Union of India & Ors.

(2) 1989 (9) ATC 21 para 4

Jagannath Behra V/s Union of India

(3) 1989 (10) ATC 565 para above 6

Sachidanand Singh V/s Union of India

(4) 1990 (14) ATC 99 para 8, 9

V.D. Joseph V/s Union of India

He pointed out that the applicant was cross examined by the Inquiry Officer. Such a procedure vitiates the inquiry as held by the Courts in the following judgements:-

(1) AIR 1958 SC 96 para 9 to 11, 13, 20, 21, 24.

(2) V.D. Joseph V/s Union of India

1990 (14) ATC 99, para 7

(3) 1991 (18) ATC 560 para 6, 7

K. Kannan V/s. Union of India

(4) 1991 (18) ATC 33 para 11, 12

G. Sela Vathy V/s Director Social Welfare.


(5) 1987 (4) ATC 727 para 6, 7, 8

Prem Baboo V/s. Union of India.

He also pointed out that the Inquiry Officer did not appreciate the statements given by the Defence Witnesses. He also pointed out that no direct evidence was produced substantiating the charges. He also argued that the orders passed by the Disciplinary Authority as well as the Appellate Authority are non-speaking orders and hence perverse. Accordingly, the penalty requires to be set aside. The Railway Administration have not been able to

prove that the service card produced by the applicant is a bogus one. In so far as the question of exhausting the remedy of revision is concerned, he stated that once the petition is admitted, that contention cannot be raised.


Mr. Shevde, the learned counsel for the respondents denied the arguments of the Counsel for the applicant. He stated that casual labourer service card is utilised only for identification and not for regularisation. The card is not issued for granting temporary status. He denied the argument of the applicant that he obtained employment on the basis of the working at Pratapnagar is not on the basis of the service card. The applicant had produced the card to the department before securing employment. The card being bogus and fabricated, he had committed misconduct. In so far as the question of competence of authority he stated that the Assistant Officer, namely, Asstt. Engineer is the appointing and Disciplinary Authority for Group D employees under the Railway Servants (Discipline and Appeal) Rules 1968. He also pointed out that the applicant had not produced any evidence that he was appointed by any authority higher than the Assistant Engineer. He denied the contention of the applicant that the chargesheet was issued mechanically with closed mind on the advice of the General Manager. Departmental action was taken against all those employees who had secured employment by producing fabricated Casual labour



Service Cards. The applicant had not worked under P.W.I. (C) Bhatia during the period he mentioned in the service card. It was not necessary simultaneously to lodge criminal case with departmental action. There is on record a reply received from Executive Engineer (C) Jamnagar stating that the applicant was not employed under P.W.I. (C) Bhatia and it was made aware to the applicant. The letter was issued to Executive Engineer, Jamnagar to depute some officer with relevant records before the Inquiry Officer as the Office of the P.W.I. (C) Bhatia had been closed. So far as the documents are concerned, the documents were inspected by the applicant and the copies were supplied to the applicant. As no Presenting Officer was appointed by the Disciplinary Authority, the Inquiry Officer had to work of asking certain questions regarding the matter, The Inquiry Officer's report is based on the evidence in the inquiry and the applicant had not been able to prove as bias. There is sufficient evidence on record to warrant punishment imposed. In so far as the orders of the Disciplinary Authority and Appellate Authority are concerned, they are speaking orders. He also mentioned that applicant had not exhausted remedy of revision before approaching the Tribunal.

We have heard both the learned counsels and gone through the documents. We may first deal with the preliminary objection raised by the respondents that the applicant had not availed a remedy of revision under Rule 25 of Railway Servants (Discipline

& Appeal) Rules 1968 against the order of the Appellate Authority. It may be pointed out that the objection was not raised by the respondents when written statement was filed. Rather this objection has been taken by filing M.A. in Feb.1995. It may be noted that the application was admitted as far back as 18th July 1990. The respondents have taken nearly five years to take this objection. We feel that the objection should have been raised well in time and before the matter was admitted. This preliminary objection cannot be raised when the matter has been admitted and at this ~~late~~ stage. Moreover, the question of filing revision is only an optional remedy available not only to the applicant but also to the respondents. There is no dispute that the applicant had filed appeal and it was rejected. We therefore reject the contention of the respondents that the applicant should have exhausted remedy of revision before approaching the Tribunal. In so far as the question as to whether criminal proceedings should have been initiated against the applicant or whether only departmental proceedings are sufficient, it is open to the department to take departmental proceedings to find out truth about the allegation. Hence the course adopted by the respondents to issue chargesheet cannot be ~~challenge~~ challenged on the ground that no criminal proceedings were initiated against the applicant. However, a perusal of the chargesheet indicates various lacunae. It is of utmost importance that charge of misconduct



should be specific. The documents and witnesses which were required to support should also be mentioned. The manner in which a chargesheet ^{be} ~~should~~ drawn, is mentioned in Railway Servants (Discipline and Appeal) Rules 1968:

"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, and a list of witnesses by whom, the articles of charge are proposed to be sustained".

From the above rule, it is quite clear that the substance of imputations of misconduct or mis-behaviour should not only be given but it is also essential to give all the relevant facts apart from the list of documents and list of witnesses by whom the articles of charge are proposed to be substantiated must be disclosed. A simple reading of the chargesheet shows that respondents have not followed the rules. In other words, the chargesheet served on the applicant could be held to be vague. There is sufficient force in the argument of the

learned counsel for the applicant in this regard. It has been held by 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 charged officer. Hon'ble Supreme Court further opined 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 there is a possibility of adverse or penal consequences like loss of job which means loss of livelihood. The charges being vague the charged officer will 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. Mentioning that the service card as bogus/spurious to indicate that the department wanted to convey to the applicant that the card was not genuine and it was pretended to be genuine. Mere reading of the service card as bogus/spurious will not itself be deemed to prove as such unless the evidence to that effect is produced by the department.

It is also seen that the chargesheet does not mention any list of witness except mentioning C.P.W.I. (R) Anand. It was pointed out by the learned counsel for the applicant that P.W.I. (C) Bhatia was the authority which had issued the C.L.

Card. The P.W.I.(C) Bhatia by name should have been given as a prosecution witness. The respondents have mentioned that Office of the P.W.I. (C) Bhatia was closed and hence he was not considered as witness. Even though the office might have been closed, the department should have taken efforts to locate the person~~s~~ who was working as P.W.I. (C) Bhatia at the time of issue of the card and he should have been included as a main witness if the prosecution wanted to make the inquiry meaningful. On the other hand we find that the respondents had issued a letter to Executive Engineer, Jamnagar on 23.3.89 to direct Shri Bhatia P.W.I. (C) Jamnagar alongwith all the relevant records and service card as well as the Thumb attend Impression Register to the D.A.R. Inquiry. Point is to be noted that there was no question of calling Mr. Bhatia as a witness. The reference to Bhatia is regarding the place of work of the applicant and not name of the person which clearly shows non application of mind by the respondents. It is further seen that except C.L. card no other documents were listed in the chargesheet. It was a burden on the prosecution to prove that the applicant had produced a false service card. Further, it is observed that no attempt was made by the prosecution to produce service card issue register, muster roll and other relevant documents at the inquiry to prove or disprove as to whether the applicant produced a false casual labour card. The mere fact that the applicant had signed in the C.L.

card instead of putting his thumb impression would not indicate that the applicant had forged the card. The respondents did not make any conscious effort to bring the person concerned along with the documents as a witness. Had they done so the evidence would have been clear. Further, it would have given the charged officer an opportunity to cross examine the witness.

From the above, it appears that the respondents were not serious about the material to be given to prove or disprove the charges against the applicant. Another important point noticed is that the charge-sheet has been issued on 26.8.88/8.9.88. However, the P.W.I. (C) Jamnagar had informed vide his letter dated 6.1.89 that no such person ^{like} ~~and~~ the applicant had been issued casual labour card as produced by the applicant. It is therefore quite obvious that the respondents had issued chargesheet in the first instance in August/September 1988 which would show that the respondents had already made up their mind regarding the guilt of the applicant and the inquiry which was proposed was a mere formality.

It is also observed that there was no Presenting Officer at the inquiry and the Inquiry Officer also himself had to ask questions to the charged officer. There is considerable force in the contention of the applicant that the questions put by the Inquiry Officer to the applicant were in the nature of cross-examination and this clearly is not permissible under the relevant rules.

61

From the foregoing it is evident that there has been quite a number of irregularities beginning from the issuing chargesheet to the conduct of the inquiry. We are quite aware that the Tribunal should not normally interfere with the proceedings and inquiry except where there is no evidence or where there is violation of principles of natural justice. In the present case, it will be seen from the above observations that it comes under the category of a case of "no evidence". In other words the inquiry has not substantiated the charge against the applicant. It therefore also calls for interference. Moreover, there were also irregularities in the conduct of inquiry in that a reasonable opportunity was not given to the applicant culminating in the violation of principles of natural justice. In such cases it is practice to refer the case back to the Inquiry Officer for re-inquiry but keeping in view the facts and circumstances of this case and the time factor involved we do not feel that it is necessary to refer this case back to the Inquiry Officer. We feel therefore that ends of justice will be met by **setting** aside the orders of the Disciplinary Authority- Annexure A-1 and that of the Appellate Authority-Annexure A-2 as bad in law. Respondents are directed to reinstate the applicant as early as possible but in any case not later than eight weeks from the date of receipt of a copy of this order. We are not, however, inclined to award back wages. However, the period