

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO. 202 of 1993**

**~~LA NO.~~**

DATE OF DECISION 4-8-1995

Bhagwandas.M. Petitioner

Mr. P.H. Pathak Advocate for the Petitioner (s)

Versus

Union of India & Another Respondent

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

**CORAM**

The Hon'ble Mr. N.B. Patel, Vice Chairman

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

**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

Bhagwandas. M.,  
C/o Mithanlal R.,  
Qtr. No.907/B, 'D' Site Area,  
Post Freelandganj - 389 160  
Tal. Dahod, Dist. Panchmahal.

..... Applicant

(Advocate : Mr. P.H. Pathak)

Versus

1. Union of India through  
Chief Works Engineer,  
Headquarter Office,  
Western Railway,  
Churchgate,  
Bombay.

2. Chief Workshop Manager,  
Railway Workshop,  
Western Railway,  
Bombay.

..... Respondents

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

O.A. No. 202 of 1993

Date : 4-8-1995

Per : Hon'ble Mr.K. Ramamoorthy, Member (A)

This application is against the order of removal passed against the applicant on 2-6-1992 which order was also upheld by the appellate authority vide its order dated 29-12-1992. The order has been challenged on the grounds of basic infirmities in the conduct of inquiry.

2. The short facts of the case are as under:

The applicant had joined the services of the respondents department as casual labour in 1983 and was given temporary status on 14-9-1984. After screening

done on 27th and 28th December, 1984, the applicant was regularised with effect from 31-12-1984 vide order dated 5-6-1985 and also obtained promotion to the post of Khallasi/Helper vide order dated 26th November, 1987. However, on 31-3-1988 he was served with a charge-sheet for the offences of serious misconduct and violating of Rule 3(1) (i) and (iii) of Railway Servants (Conduct) Rules, 1966. The applicant is alleged to have got engagement in Railway service on the basis of a false service card showing his having served earlier in Ujjain with the Railways. After an inquiry into the matter, the Inquiry Officer had found the charges as having been proved and based on the Inquiry Officer's report the applicant was removed from service. The appeal was also rejected on 29-12-1992. The case of the applicant rests on the following grounds:-

- i) The counsel for the applicant stated that the charge-sheet suffered from the infirmity of having been issued by Assistant Works Manager whereas the disciplinary authority of the applicant was Chief Works Manager.
- ii) The inquiry itself was held after 5 years.
- iii) The applicant has never been shown the original service card and whole proceedings had been taken on the basis of xerox copy whose authenticity is denied by the applicant.
- iv) There was also procedural irregularity as the applicant was first examined before the prosecution had put forward its own case. The prosecution witness at Ujjain was examined thereafter, i.e. on 16-3-1989. This was

in breach of Rules 12 to 17.

- v) The applicant states that the part of the inquiry particularly relating to the examination of record of service of the applicant at Ujjain was done in his absence and the applicant had been denied any opportunity to examine the records to prove his point of having worked with the respondents earlier.

3. The counsel for both the applicant and the respondents were heard and after going through the records, the Tribunal has come to the following conclusions:-

- i) The fact that charge-sheet was issued by Assistant Works Manager does not constitute any illegality as the formal punishment order has been passed by the Chief Works Manager who is the disciplinary authority.
- ii) The fact that the inquiry was held after five years cannot by itself be a factor to vitiate the proceedings. The proceedings can start only after detection of a particular kind of offence and after preliminary inquiry into the matter. If some time is taken, therefore, the time factor cannot vitiate the proceedings.
- iii) The fact that the proceedings are based on a xerox copy also cannot by itself be a factor which can prevent the respondents from taking action. In this case, it is the contention of the respondents that the applicant himself had produced only the xerox copy along with

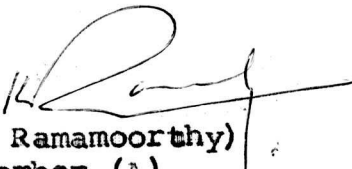
application and hence it is this document which has formed the basis for the inquiry. This ground also is not therefore, one which can be upheld as having caused prejudice to the applicant.

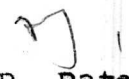
- iv) Fourth and fifth grounds can be taken together. While it is true that rules do laid down the procedure that the department witness should be examined first. In this particular case, the fact that the particular prosecution witness has to be examined at a different place, namely Ujjain has resulted in certain examinations being taken up earlier. In our view, this factor alone cannot, however, prejudice the conduct of the inquiry itself. It is true that the prosecution witness at Ujjain has been examined in the absence of the applicant. The respondents have pointed out the fact that the applicant had been given sufficient notice and the fact that applicant has not been able to come for the proceedings was intimated to the respondents only after the date of the proceedings fixed at Ujjain. Nevertheless, it is seen from the records that the applicant was clearly given a further opportunity at the next hearing to re-examine the proceedings at Ujjain which the applicant has declined for non-supply of relevant records.

4. It is necessary to go into this aspect of the proceedings at some length as the case of the

respondents is very much based on this evidence. In addition to recording the evidence of the PWI, the Inquiry Officer had seen the muster sheet and the thumb impression register of the office of PWI, Ujjain. After inspection of this muster roll and the thumb impression, the Inquiry Officer has recorded that he could not find the name of the delinquent in this record. Pay bills and other records, however, could not be connected. It is seen that while the Inquiry Officer has chosen to record this finding, he has not chosen to take these two documents on record. It is also admitted that this inspection was carried out by the Inquiry Officer in the absence of the applicant and since the case of the applicant having not worked earlier is very much based on this evidence, rules of natural justice required that the applicant should have been given opportunity to be given inspection of these records which could have been done if the relevant extracts had been taken on record. The applicant has specifically stated before the Inquiry Officer in his subsequent evidence on 16-3-89 and 17-3-89 that necessary co-operation had not been extended to the applicant in this regard by the PWI at Ujjain. It is for this reason that the applicant had chosen not to cross-examine the part of the evidence at Ujjain. In view of the fact that this evidence has been recorded without being given an opportunity for the applicant to examine the record and since the finding is also based on this aspect of the case, it has to be held that this finding suffers from a

serious flaw of the denial of natural justice to the applicant. On this ground, therefore, the inquiry proceedings will have to be set-aside and orders passed on this inquiry will have to be quashed. With the result, the applicant will have to be reinstated in service. This may be done within a period of six weeks from the date of receipt of this judgment. This, however, does not preclude the respondents from the stage of first giving the applicant adequate opportunity of taking inspection and, if so desired by him, copies of relevant records, registers and documents of the office of PWI, Ujjain on which department proposed to rely and then recording evidence of witnesses after giving adequate opportunity to the applicant to remain present at the time of such examination of witnesses and of cross-examining them.

  
(K. Ramamoorthy)  
Member (A)

  
(N.B. Patel)  
Vice Chairman

kvr

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Application No. 04/202/93

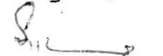
Transfer Application No. \_\_\_\_\_

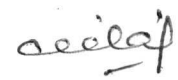
CERTIFICATE

Certified that no further action is required to be taken and  
the case is fit for consignment to the Record Room (Decided).

Dated : 16.08.98

Countersign :

  
16/08/98  
Section Officer.

  
Signature of the Dealing  
Assistant



I N D E X - S H E E T

04/202/93

Bhogwondar M.

U.O. 1802,

[illegible]