

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.1525/96

Present : Hon'ble Mr. Sarveshwar Jha, Member (A)

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

vs.

1. Union of India thr.
The General Manager,
E.Rly.

2. Senior Divisional
Electrical Engineer,
E.Rly,
Asansol.

Respondents

For the applicant :

Mr. B. Chatterjee

For the respondents : Mr.P.K. Arora

Heard on : 20.9.2004

Order on : 30.9.2004

ORDER

Per Mukesh Kumar Gupta, Member (J)

1. Validity of order dated 7.11.1996 (Annexure A), rejecting applicant's appeal against the punishment of removal order dated 21.9.1996, is questioned in the present application. The reliefs prayed for are as follows:

(1) The applicant prays for a declaration that the removal from service of the applicant as per Annexure 'A/1' dt.20.9.96 was/is bad in law as removed from 21.9.96 abruptly by the Disciplinary Authority, which order merged with the Appellate Order Annexure 'A' dt. 7.11.96.

(2) The Appellate order is equally bad in law being in violation of the mandatory rules of the RSD&A Rules 1968 and of the Hon'ble Supreme Court as stated above, without considering the points raised in the appeal dt. 25.10.96 as provided in

the Rules of RSD&A Rules, 1968, which renders the entire disciplinary proceeding bad, illegal, vitiated and inoperative so to be quashed.

- (3) all costs of this case.
- (4) And/or any other relief or reliefs which may seem fit and proper to the Tribunal.

2. The facts as stated by the applicant are that pursuant to advertisement dated 29.10.1987 issued by the Divisional Railway Manager, Eastern Railway, Asansol, he was appointed in the capacity of substitute cleaner in January 1988. When he was working satisfactory, without any complaint, he was thrown out of employment most unceremoniously in absolute departure from the prescribed method laid down under the rules for mala fide and motivated reasons; that no inquiry was held giving the applicant reasonable and proper opportunity to defend his case; that there had been infraction of Article 311 of the Constitution of India; that no copies of the documents listed in the charge sheet dated 15.6.1995 were ever enclosed or supplied; that the alleged confession could not have been the basis for inflicting punishment; that there was no witness examined in the inquiry; that no one was allowed to cross examine; that no documents were produced; the Inquiry Officer did not find him guilty; that after the inquiry, punishment of removal by an order dated 20.9.1996 was imposed against which he filed appeal and the appellate authority rejected the said appeal vide impugned communication dated 7.11.1996 by a laconic and cryptic order. In any event, since the applicant had been working for a long time i.e., about eight years it was not justified on the part of the respondents to remove him from service.

3. The respondents contested the said claim and resisted the applicant's prayer by stating that based on information regarding suppression of original date of birth while applying for the post in question vide application dated 12.11.1987, indicating his date of birth as 2.1.1960 though his date of birth was 2.1.1957, the matter was examined. As per the employment notice dated 29.10.1987, the eligibility condition prescribed, for the said post, was 18-28 years as on 31st October 1987. Keeping in view his date birth as 2.11.1957. Therefore, he was overaged. Accordingly it was contended that a charge sheet dated 15.6.1995 was issued. His date of birth was also verified from West Bengal Board of Education, Calcutta, from where he had passed Higher Secondary Examination. Since he admitted his guilt, the Inquiry Officer returned a finding of holding him guilty of the charge after providing reasonable opportunity of hearing and observing all rules in vogue the penalty of removal was imposed upon the applicant. His appeal was considered by the appellate authority dispassionately, and having regard to the facts of the case the applicant's request was not acceded to.

4. We heard learned counsel for the parties and perused the pleadings besides the original records of disciplinary proceedings produced by the learned counsel for the respondents.

5. Mr.B.Chatterjee, learned arguing counsel, appearing along with Ms.B.Mondal raised various contentions in support of his claim, as follows: Firstly it was vehemently contended that the appellate

order dated 7.11.1996 was not a speaking order and the said appellate order merges the impugned penalty order of removal dated 20.9.1996, made operational with effect from 21.9.1996. It was therefore contended that in view of the law laid down by the Hon'ble Supreme Court in AIR 1986 SC 1173 Ramachander v. Union of India punishment order gets merged with the appellate order, and if the same had been passed in violation of the principles of natural justice without assigning any reasons, the same is liable to be set aside. A reference was also made to AIR 1965 Calcutta 557 S.P. Goswami alias Sakthi Pada Goswami v. General Manager, SE Railway, particularly para 5, to contend that since the order passed by the appellate authority was cryptic having not showing that it considered facts on which such order was based, it has to be held that there was no consideration of the contentions raised by the parties and, therefore, the same has necessarily to be quashed and set aside.

The next contention raised by the learned counsel, for the applicant was that not even a single document was either annexed along with the charge memorandum dated 15.6.1995, or supplied during the course of departmental proceedings and, therefore, the applicant was seriously prejudiced in placing his defence before the concerned authorities. It was contended that non-supply of the documents relied upon during the course of inquiry proceedings tantamounts to denial of reasonable opportunity and for this purpose reference was made to the Constitution Bench judgment in Trilok Nath V. Union of India 1967 SLR 759. Learned counsel

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for the applicant also contended that it is not necessary that delinquent officials should make a request to supply documents.

Further contention was raised that the documents coming from the government cannot be exhibited without there being proved and for this purpose reliance was placed on AIR 1978 Allahabad 185 Smt. Kunti Devi v. Radhey Shyam particularly para 7, it was held that mere facts that the documents was forthcoming from the custody of the government department which bear the seal impression of the said Department will not dispense with necessity of formally proving the same in the court of law. The documents were certainly not public documents and they were indeed to be formally proved.

Lastly it was contended that the applicant's confessional statement could not have been relied upon by the respondents and for this purpose reliance was placed on AIR 1966 HP 18 State v. Atma Ram. Reliance was also placed on 2002(2) ATJ 434 K. Bhaskar Vs. The C.O., HQ Training Command (Unit), Air Force, Bangalore, to contend admission of guilt by the delinquent officer must be in specific, clear and unambiguous terms.

6. Shri P.K. Arora, learned counsel for the respondents on the other hand strenuously urged that none of the judgments relied upon by the applicant are of any avail in the peculiar facts of the present case as the applicant himself in questions No.7 and 8 before the Inquiry Officer admitted the charge brought against him. Our attention was drawn to the statement made by

the applicant on 20.1.1996. In question No.7, after reading the charge as contained in Memorandum dated 15.6.1995, the applicant was required to state whether he had anything to say about the said charge or not.

In answer to the same, he stated as follows:

"After the death of my father in 1986, I was passing my days in starvation with a big family consisting of seven members out of which two are physically handicapped. I came to know that substitute cleaners are going to be recruited in the Railways, but discrimination was drawn in respect of eligibility for application between reserved and unreserved candidates. Hence, I was in a need of an employment to save the lives of my family including two handicapped persons and my old ailing mother of 80 years, circumstances compelled me to apply for appointment."

In reply to question No.8 specifically what he had to say about the charge, he stated:

"Yes. I am accepting the charges brought against me vide question No.7 and reasons for giving that false report or certificate regarding my date of birth. I have already stated in the answer to the question No.7." (emphasis supplied)

As far as the question of supplying the documents relied upon by the disciplinary authority is concerned, it was contended that at no point of time such a request was ever made either before the Inquiry Authority or before the Disciplinary Authority. Our attention was also drawn to the appeal filed by the applicant dated 25.10.1986 (Annexure A-5). Shri Arora, Learned Counsel, further contended that it is well settled law that when the charge is admitted and the disciplinary authority's findings are accepted by the appellate authority, it need not to pass very detailed and speaking order and produce in verbatim all what had been said by the disciplinary authority particularly when all the contentions raised were duly considered by the Inquiring authorities as well as the disciplinary



authority. It was further contended that superfluous contentions raised in the appeal need not to be considered by the appellate authority.

7. On bestowing our careful consideration to the contentions raised at the Bar, pleadings filed and the judgments relied upon, we are of the considered view that in the present case at no point of time except before the Appellate Authority any request to supply the documents, was made. On the other hand, we find that the applicant categorically admitted the charges levelled against him vide memo dated 15.6.1995.

If we have regard to the bare facts that the applicant's Secondary Examination Certificate, which was placed on record indicating his date of birth being 2.1.1957, one would reach inescapable conclusion that the applicant under no circumstance, was eligible for the post in question as on that date, he had crossed 28 years maximum age prescribed for the said post vide advertisement dated 29.10.1987. A perusal of the statement admitting the guilt made by the applicant before the Inquiry Office indeed goes to show that he pleaded mercy and narrated the circumstances which compelled him to secure the job. It is not the case of the applicant that the said statement was made by him under compulsion or duress. That being the case in our considered opinion, no prejudice whatsoever had been caused to the applicant and the respondents were fully justified to rely upon the said statement made by him while imposing the penalty. In our considered opinion none of the judgments cited by the applicant are applicable in the peculiar facts of the present case.

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