

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 186/91
XIX/X/X NoX

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DATE OF DECISION 22.6.1992

P. Marimuthu _____ Applicant (s)

Mr. B. Gopakumar _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the General Manager, Southern
Railway, Madras-3 and 5 others.

Mr. M. C. Cherian _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

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

JUDGEMENT

(Shri N. Dharmadan, Judicial Member)

The applicant was a Man Mazdoor under the Permanent Way Inspector, Karoor. He is challenging the disciplinary proceedings and consequent removal from service.

2. Annexure-I memorandum of charge was received by the applicant on 27.7.1987. It contains the following articles of charges:-

"Statement of articles of charges framed against Sri P. Marimuthu, CPC Man Mazdoor under PWI/KRR:-

That the said Sri P. Marimuthu, CPC Man Mazdoor working under PWI/KRR while functioning as CPC Man Mazdoor under PWI/KRR section has committed serious misconduct in that he produced two bogus casual labour service cards showing his period of employment as casual labour under IOW/JTJ-MAR Doubling/Patchur as under:

Card No.1. A. From 16.6.77 to 15.12.77
B. From 16.2.78 to 15.10.78
C. From 25.10.78 to 15.7.79

Card No.2. From 16.6.81 to 15.11.81.

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He has therefore failed to maintain absolute integrity and behaved in a manner quite unbecoming of a Railway Servant and thus violated Rule 3(1)91 and (iii) of Railway Services (conduct) Rule, 1966."

He filed his reply denying the charges. But a disciplinary enquiry was conducted, after appointing the 4th respondent, xx xxxxxxxx xx xxxxxxx under Rule 9 and 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant's request to the 4th respondent to take steps for the production of service cards of 41 employees issued by the same authority who issued the service card to the applicant was not accepted. According to the applicant even the appointment of the 4th respondent as enquiry authority is without jurisdiction. The applicant's request for postponement of the enquiry because of the failure of the production of service cards of 41 employees referred by the applicant, was not granted. Since the 4th respondent was biased the applicant made a request before the 3rd respondent for transfer of the case to some other independent enquiry authority. This was also not accepted by the 3rd respondent. However, the 4th respondent concluded the enquiry without either examining the service cards of the 41 employees or examining the witnesses on the basis of request of the applicant. Accepting the findings of the Inquiry Officer the disciplinary authority found the applicant guilty of the charges and imposed the penalty of removal from service as per Annexure-A3 penalty advice dated 19.1.1990. The appeal filed by the applicant was also rejected as per order dated 1.10.1990. The applicant is challenging the orders at Annexure A3 & A4 and connected proceedings.

3. The respondents filed their reply denying all the averments and allegations made in the application. The applicant filed the rejoinder.

4. When the case came up for hearing the learned counsel appearing for the applicant submitted that an identical issue came up for consideration before this Tribunal in O.A. 678/90 and this Tribunal set aside the penalty order and allowed the application. The learned counsel for the respondents on the other hand contended that the judgment in O.A. 678/90 requires reconsideration in the light of the decisions in the Jagdish Prasad vs. Sachiv, Zila Ganna Committee, Muzaffarnagar & another, 1986 (2) SCC 338 and Kismatram Kedaram vs. Divisional Railway Manager, Central Railway, Bombay, 1987 (5) ATC 488.

5. We have gone through the judgment in O.A. 678/90. The charge against the applicant in that case was that while functioning as CPC Man Mazdoor he committed serious misconduct in having produced bogus casual labour card for the period from 6.11.78 to 5.5.81 in order to get employment as casual labourer and accordingly he failed to maintain absolute integrity and behaved in a manner quite unbecoming of a Railway servant and thus violated Rules 3(1) (i) & (iii) of Railway Servants (Conduct) Rules. After considering the matter elaborately this Tribunal held as follows:-

"Since the applicant admittedly was not in service before 5.1.82 when he was engaged for the first time, production of allegedly bogus service cards could be possible only before 5.1.82, i.e. before he was engaged even as a casual employee. Thus, by no stretch of imagination can it be said that when he produced the allegedly bogus service cards, he was governed by the Railway Servants Conduct Rules. If the Conduct Rules were not applicable to him when he produced the service cards, the question of his violating Rule 3 of those rules does not arise. The foundation of the charge, therefore, falls through."

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6. The question arising in this case is also identical and in that case the Tribunal also placed reliance on the Supreme Court judgment in Union of India vs. Mohd. Ramzan Khan, Judgment Today 1990 (4) SC 456 and held that non-supply of the enquiry report before the disciplinary authority makes up his mind on the enquiry report to impose the punishment is violative of the principle of natural justice.

7. We are of the view that the decision in O.A. 678/90 can be squarely applied to the facts of this case and the impugned orders are liable to be set aside.

8. We have also gone through the two decisions in Jagdish Prasad vs. Sachiv, Zila Ganna Committee, Muzaffarnagar & another, 1986 (2) SCC 338 and Kismatram Kedaram vs. Divisional Railway Manager, Central Railway, Bombay, 1987 (5) ATC 488. These decisions do not deal with the specific question which arose for consideration by this Tribunal in O.A. 678/90 and they are not relevant for deciding the issue. In fact, in Jagdish Prasad's case the Supreme Court was considering the question whether the termination of service of the appellant there in is an innocuous order of termination simpliciter in accordance with the terms and conditions of the appointment or it casts any stigma or aspersion on the service career of the appellant thereby prejudicially affecting his service career. The question arising in the instant case is entirely different. The decision of the CAT, New Bombay, in Kismatram Kedaram case is also not applicable to the facts of this case. Hence, we are unable to accept the contention of the learned counsel for the respondents that the decision in O.A. 678/90 requires reconsideration.

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Accordingly, we reject that request.

9. In the result we follow our judgment in OA 678/90 and set aside the impugned orders at Annexure A1 to A4 and direct the respondents to reinstate the applicant in service with all consequential benefits as if the impugned orders had not been taken up for consideration. The application is allowed. There will be no order as to costs.

N. Dharmadan
22.6.92

(N. DHARMADAN)
JUDICIAL MEMBER

S.P. Mukerji

(S.P. MUKERJI)
VICE CHAIRMAN