

A/S

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

O.A. No. 50 of 1989

Lucknow this the 24th day of Dec., 99.

HON. MR. D.C. VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Muneshwar Dayal Misra aged about 35 years, son of late Ashwasthama, resident of Mohalla Chitta Khera, Aishbagh, Shastri Bhawan, Lucknow.

Applicant.

By Advocate Shri L.K. Pathak.

versus

1. Union of India through the General Manager, Northern Railway Headquarters office, Baroda House New Delhi.
2. The Chief Workshop Engineer, Headquarter Office Northern Railway Baroda House, New Delhi.
3. The Dy. Chief Mechanical Engineer, Northern Railway Carriage and wagon Shops, Alambagh, Lucknow.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

BY D.C. VERMA, MEMBER(J)

Vide this O.A., the applicant has challenged the order of removal from service passed on 12.5.88 by respondent No. 3 and the appellate order dated 19.9.88 passed by respondent No. 2. Consequential reliefs have also been claimed.

2. The brief facts of the case are that the applicant was working in the Canteen of Carriage and Wagon Workshop Northern Railway Lucknow. Subsequently, as the Canteen was a statutory canteen, the post for appointment of Manager was advertised and the applicant applied for the said post. The applicant claimed that he has passed Class 9 and was eligible for the post. With this



application (AnneuxreC-1) the applicant enclosed ^{an} ~~true~~ attested copy of educational certificate. The applicant was appointed as Canteen Manager and started working as such. The applicant was treated as railway employee w.e.f. 22nd October, 1980 in terms of Railway Board letter dated 22.5.81 because prior to 22.10.1980 all the staff of the Canteen were not railway employees and the salary of the staff was paid out of the canteen fund. In 1985, a complaint was received that the applicant has obtained employment as Canteen Manager by submitting false educational cetificate. An enquiry was made and it was found that the copy of educational certificate attached by the applicant alleged to have been issued from D.A.V. Inter College, was not genuine. In the Schollar register at serial No. 9583, the name of one Mohd. Yahya son of Tafazzul Husain resident of Alambagh was found recorded instead of the applicant. Consequently, the copy of the certificate filed bythe applicant was found as forged and false. The applicant was therefore, served with a major penalty charge sheet on 13.12.1985 (Anneuxre C-2 to the C.A.). The applicant submitted his explanation on 10.1.1986 (Anneuxre-2 to the O.A.) and therein he had stated that he did not submit the transfer certificate from the D.A.V. Inter College, Lucknow. With his explanation, the applicant submitted another transfer certificate from MKSD Inter College Paper Mill Colony, Nishtganj, Lucknow. Consequently the enquiry was made from MKSD Inter College. The Principal MKSD Inter College reported that Muneshwar Dayal son of Shri Ashwasthama never studied in his college and cancelled the said Transfer certificate alleged to have been issued on 4.1.1986 through letter dated 6.2.86. Thus, according to the respondents, even




subsequent certificate filed by the applicant from MKSD Inter College was found forged and false.


3. A charge sheet issued on 13.12.85 was withdrawn and ^{fresh} ~~therefore, the~~ charge sheet was issued on 22.10.86. The applicant was again given opportunity but as no reply was received, an enquiry officer was nominated by the disciplinary authority. A defence counsel was appointed and the enquiry proceeded. Meanwhile, the applicant filed a Civil Suit in the Civil Court against the Principal MKSD Inter College, Lucknow. The applicant informed the enquiry officer also on 2.6.87 (Anneuxre 11 to the O.A.) that the matter has become subjudice and so the enquiry be kept in abeyance till finalisation of the case by court of law. The enquiry officer however, proceeded with the enquiry and gave his finding on 27.1.88. By the impugned order, the applicant was removed from service but the applicant preferred an appeal. The same was dismissed by the other impugned order, hence this O.A.

4. The impugned orders have been challenged as being non-speaking and illegal as they have been passed without application of mind and without following due procedure prescribed in law. They have also been challenged on the ground that the copies of the documents were not supplied to the applicant, nor reasonable opportunity of being heard was provided. Various other grounds of challenge have been taken as detailed in the O.A.

5. We have heard the learned counsel for the parties at great length, and we are of the view that it is not at all necessary for this Tribunal to decide the correctness/genuineness of the certificate filed by the applicant either from the D.A.V. Inter College or FROM MKSD Inter College



Paper Mill Colony Lucknow. The Civil Suit is still pending. It will be for the Civil Court to make its own assessment and decide the issue. In the service matter, we are required to find out whether the procedure followed by the enquiry officer and the appellate authority is in accordance with the rules or not. If the enquiry officer has not followed the prescribed rules, the order of the disciplinary authority and also of the appellate authority would stand vitiated. From this angle, we have examined the enquiry report dated 27.1.88, which is attached with Anneuxre 14 to the O.A. The enquiry officer's report is in two pages only. It does not contain any details. Consequently, the learned counsel for the respondents was asked to produce the original records so that we may examine ^{the procedure and} the evidence recorded by the enquiry officer and find out the substance which is ^{based} ~~recorded~~ in the report of the enquiry officer. The learned counsel for the respondents ~~has~~ showed his inability to produce the records and drawn our attention towards para 15 of the Supplementary Counter reply where it has been specifically mentioned that the service record pertaining to the punishment order was sent to the then Railway Advocate, Shri Arjun Bhargava along with para wise reply for drafting reply. Later on Shri Arjun Bhargava was de-panelled from amongst the Railway Advocates, as such the case was allotted to the other counsel. The service records and the D.A.R. file could not be made available to the counsel appointed subsequently, as it was said to have been lost. The learned counsel has also drawn attention towards letters received in this respects. Thus, we have not been able to see ~~what~~ evidence was recorded, what procedure was followed. WE have, therefore, examined the contents of the



enquiry officer's report. As per rule 9(25) of the Railway Servants (Discipline and Appeal) Rules, 1968 (in Short Rules of 1968) after the conclusion of the enquiry, a report has to be prepared which shall contain the following:

- a) the articles of charge and the statement of misconduct or misbehaviour
- b) the defence of the Railway servant in respect of each article of charge.
- c) assessment of the evidence in respect of each article of charge;
- d) the findings on each article of charge and the reasons therefor.

6. On examining the enquiry officer's report, we find that none of the 4 requirements are fulfilled. The earlier charge sheet was withdrawn. ~~the~~ The present charge sheet was only in respect of educational certificate filed by the applicant from MKSD Inter College. The oral evidence recorded, the documentary evidence in respect of this charge are not clearly indicated in the enquiry officer's report, nor the assessment of evidence in respect of the articles of charges has been made. Except for one witness, we have not been able to find out evidence of any other witness was recorded. Giving a finding, without assessment of the evidence on the article of charge alleged against the applicant, makes the enquiry officer's report invalid as it violates the provisions of Rule 9(25) (1) of the Rules, of 1968.

7. Similarly, we find that the appellate order Anneuxre 17 to the O.A. is a very cryptic order and it contains nothing. Though the applicant had submitted a detailed memo of appeal, copy of which has been annexed as Anneuxre -16 to the O.A. nothing has been considered by the appellate authority. ~~The~~ Rule 22 of Rules of 1968 provides the contents of appellate order. The appellate



^{authority}
~~order~~ is required to examine whether the procedure laid down in the rules has been complied with and if not whether non compliance has resulted in violation of any provisions of constitution of India or in the failure of justice. The appellate authority is also required to examine whether the findings of the disciplinary authority are warranted by the evidence on record. The contents of the appellate order do not show that any attention was given to any of these requirements. Consequently, in our view the appellate order is also not valid.

9. In view of the discussions made above, both the impugned orders are not valid and are liable to be quashed. Accordingly, we quash the two impugned orders. We however, leave it open to the respondents to start fresh enquiry, if they deem it proper in the circumstances of the case, and also to pass necessary orders with regard to the period the applicant had been absent from service due to impugned orders.

10. The O.A. is decided accordingly. Costs easy.


MEMBER (A)


MEMBER (J)

Lucknow; Dated: 24.12.99

jShakeel/