

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION No. 147 of 2011

ORDER RESERVED ON 19.2.2015.

ORDER PRONOUNCED ON 05/3/15

HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Harish Chand aged about 46 years s/o Shri Lal R/o House No. 11, Pandareeba, Charbagh, Lucknow.

Applicant

By Advocate : Sri A. K. Srivastava

1. Union of India General Manager (N.R. Badouda House, New Delhi.
2. General Manager (Vigilance) (N.R.) Badouda House, New Delhi.
3. Divisional Railway Manager (N.R.) Hazratganj, Lucknow.
4. Divisional Engineer (I) (N.R.), Hazratganj, Lucknow.
5. Assistant Divisional Engineer (I) (N.R.), Hazratganj, Lucknow.
6. Senior Section Engineer (P.W) Mandal Rail Path Prasikchan Kendra (N.R.) Lucknow/Inquiry Officer.
7. Sri I.M. Sethi Retd. Sub Arban Railway Manger, Mumbari Central (W.R.) R/o D-56, Badhwar Park Colab, Bombay No. 5.

Respondents

By Advocate: Sri B. B. Tripathi for Sri M. K. Singh.

ORDER

HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(i) This Hon'ble Tribunal may kindly be pleased to set-aside the impugned order of dismissal from services dated 4.8.2009 passed by the Assistant Engineer (I) (N.R) contained as Annexure No. 1-A and the impugned order dated 28.5.2010 passed by the

Divisional Engineer (I) (N.R.) Lucknow, contained as Annexure No. 1, by which the appeal of the applicant against the impugned dismissal order has been rejected without application of mind.

- (ii) This Hon'ble Tribunal may kindly be pleased to direct to the respondent to allow the applicant continue as usual in the service as the impugned order of dismissal has never been passed and pay his arrears as salary and allowances treating him in continuous services with effect from 4.8.2009 and with all consequential benefits.
- (iii) This Hon'ble Tribunal may kindly be pleased to pass such other order which may kindly be deemed just and proper in the circumstances of the case.
- (iv) To allow the original application with costs.

2. The brief facts of the case are that the applicant initially appointed as casual labour in 1984 and identity card was issued and subsequently, the applicant was transferred from office of Assistant Divisional Engineer to the office of DRM (E) Lucknow Northern Railway and he was posted as Gang Man in gang No.BP-3. The services of the applicant was terminated in 2009. Not only this, it is also indicated by the applicant that he has submitted an appeal and the appeal so submitted by the applicant was rejected by the authorities without any reasons and without opportunity of hearing as such, the impugned order is perverse and is required interference by this Tribunal.

3. On behalf of the respondents, reply is filed and through reply, it is indicated that the applicant was afforded full opportunity of hearing and after sufficient opportunity to defend himself, but the evidences proved the applicant guilty of the misconduct thus he has rightly been punished and he has not participated in the inquiry. It is also indicated by the respondents that the applicant submitted fake TC at the time of entry into service. As such, the disciplinary authority has no other option except to take action against the applicant. The learned counsel for the respondents has also relied upon a

decision of the Hon'ble Apex Court in the case **of Union of India Vs. G. Annadurai 2009 (13) SCC 469** and pointed out that the Hon'ble Apex Court has been pleased to observe that if an employee fails to participate in the inquiry , despite sufficient opportunity , the decision so taken is not bad in the eyes of law and it does not require any interference.

4. On behalf of the applicant , rejoinder is filed and through rejoinder mostly the averments made in the OA are reiterated and the contents of the counter reply are denied. Apart from this, the learned counsel for the applicant has also relied upon certain decisions such as **(2010) 2 UPLBEC 1128- Raj Nath Singh Vs. State of U.P. and Others, (2010) 2 UPLBEC 1673, C.P. Rajvir Singh Vs. State of U.P. & Others, (2002) 1 UPLBEC 705 - Pradeep Kumar Singh Vs. U.P. State Sugar Corporation and (2009)1UPLBEC 643 R. P. Srivastava Vs. Pradeshik Cooperative Dairy Federation** and has indicated that the termination is bad in the eyes of law as such, it requires interference by this Tribunal.

5. Heard the learned counsel for the parties and perused the record.

6. It is to be pointed out that the applicant was initially appointed in the respondents organisation and after serving for some time, he was charge sheeted through which it is indicated that while appointment as casual labour and subsequently recruited as temporary Gangman during the year 1994 against recruitment of Class IV services in Engineering department in open line, the applicant committed serious irregularities and has also confirmed his statement that his date of birth is 17.2.1964 and has also stated that Class 7th and 8th passed from Maharaja Agersen Vidhyalay. The Principal has also informed to

the respondents office that the said TC was not issued by the School and has also informed that the name of the applicant also did not registered in the school records of year 1981 for class 8th. As such, it is indicated that the applicant failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of a Railway Servant. The copy of the charge sheet was duly served upon the applicant and he was asked to submit the reply.

The said memorandum was issued on 8.11.2007. After the service of the charge sheet, it was expected from the applicant to give the reply to the memorandum, but he has not submitted any reply as the inquiry officer proceeded with the same. It is also indicated that the inquiry report dated 18.11.2008 also provides that the applicant was given due opportunity to participate in the inquiry, but he has not cooperated with the inquiry. Though the applicant appeared in the inquiry proceedings, but not given any reply and has also not produced any defence helper. As such, inquiry officer submitted the report to the disciplinary authority and the disciplinary authority finally came to the conclusion and passed the orders of punishment through which an order of dismissal was passed. The applicant thereafter preferred an appeal to the appellate authority and the said appeal was also considered and decided by the appellate authority by means of a detailed order dated 28.5.2010. While deciding the appeal, it is indicated by the appellate authority that the disciplinary authority duly examined the inquiry report and the evidence as the record imposed the penalty in accordance with Rules. Keeping in view of all the circumstances and the principles of natural justice as well as provisions as contained in Railway Servants and Conduct Rules. It is also indicated by the appellate authority that the

applicant deliberately and knowingly submitted the forged and fake certificate of his date of birth a well as educational qualification and illegally procured the job as such, the applicant has committed fraud in obtaining the appointment order.

It is also to be indicated that the judgments so cited by the applicant pertains violation of principles of natural justice or where no notice or opportunity was ever given before passing the impugned orders. In the instant case, the full opportunity was given to the applicant to participate in the inquiry. It is clear from the inquiry officer's report that the applicant appeared before the inquiry officer but has failed to cooperate with the inquiry. The judgment so cited by the applicant are not applicable in the case of the applicant. The applicant was given full opportunity, to participate in the inquiry, but he fail to appear in the inquiry and provided to submit the required evidence as such no interference is required in the present O.A.

7. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. G. Annadurai reported in 2010 (1) SCC (L&S) 278**, the Hon'ble Apex Court has been pleased to observe as under:-

“5. Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved.

8. As observed by the Hon'ble Apex Court in the case of **State of Bikaner Vs. Nami Chand Nalwa reported in 2011 (4) SCC, 584**, the scope of judicial review in functioning of disciplinary

authority is hardly called for. The Hon'ble Apex Court further observed as under:-

"7. When a court is considering whether punishment of termination from service imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

9. As observed by the Hon'ble Apex Court in the case of **B.C.**

Chaturvedi vs. U.O.I. & ors. Reported in 1995 (6) SCC 749

has been pleased to observe that "**the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence.**"

10. In another case the Hon'ble Apex Court in the case **of Union of India v. Upendra Singh reported in (1994) 3 SCC 357** has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity

alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.”

11. As observed by the Hon’ble Apex Court in the case of **Union of India Vs. Sardar Pahadur reported in 1972 4 SCC-618** is as under:

“A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.”

12. As the applicant was given full opportunity to participate in the inquiry and after due inquiry, the disciplinary authority came to the conclusion that the applicant committed fraud in obtaining the appointment by submitting forged transfer certificates of Class 8th passed from Maharaja Agersen Vidhyalay, as such, we do not find any reason to interfere in the present O.A.

13. Considering the observations of the Hon’ble Apex Court and the argument advanced by the learned counsel for the parties and

also on the basis of records, we are not inclined to interfere in the present original application.

14. Accordingly, O.A. is dismissed. No costs.

J. Chandra

(Ms. Jayati Chandra)

Member (A)

N. K. Agrawal

(Navneet Kumar)

Member (J)

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