

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 184 of 06

Date of order : 13.8.10

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [J]
Hon'ble Mr. A.K. Jain, Member [A]

P.N. Vishwakarma, S/o Shri Long Vishwakarma, r/o Shivanam, P.O. Nadaul,
District – Jehanabad [Bihar]

....Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through the General Manager, S.E. Railway, Kokkata.
2. The Chief Signal & Telecom Engineer, R.E. Kolkata.
3. The Deputy Chief Signal & Telecom Engineer, R.E. Kolkata.
4. The District Signal & Telecom Engineer, R.E. B.P.C.
5. The D.S.T.E., R.E. , Ranchi.
6. The Signal Inspector [Con], E.C. Railway, Dhanbad.

....Respondents

By Advocate : Shri R.N. Choudhary.

O R D E R

Justice Rekha Kumari, M [J]:- The applicant has filed this OA for quashing the order dated 25.10.2005 of the District Signal & Telecom Engineer, Railway Electrification cum Disciplinary Authority [Annexure A/16], removing the applicant from service with effect from 26.7.1999, and also for quashing the order dated 30.01.2002 [Annexure A/18] of the Appellate Authority, confirming the order of removal. There is also a prayer for direction to the respondents to reinstate the applicant in service with effect from 26.7.1999, with all consequential benefits.

2. The case of the applicant is that he was initially engaged as casual plammer man on 06.02.1979 under the Signal Inspector [Con], E.C. Railway, Dhanbad. Thereafter, he was engaged as Blacksmith under the Railway Electrification [R.E in short] and posted at Mathura where he joined on 16.12.1981. On 13.10.1986, after verification of his service particulars and previous records, he was granted temporary status with effect from 10.1.1984. He was transferred to Nagpur on 17.9.1984 and then to Ranchi on 10.2.1991. He was , then, served with a charge sheet dated 05.10.1994 under Rule 9 of the

Railway Servant, [D&A] rules, 1968 on the allegation that his earlier certificate of working from 06.02.1979 to 15.5.1981 issued by the Signal Inspector was forged.

3. It is further stated that the applicant demanded relevant documents relied on in the charge sheet and some other documents relevant for his defence statement by representation dated 04.01.1995 [vide Annexure A/4]. The respondents, in reply to the said representation, refused to supply many of the relevant documents , in violation of principle of natural justice. The applicant submitted other representations dated 22.2.1995 [Annexure A/6] and dated 13.10.1995 [Annexure A /7] for supply of the above non-supplied documents. The applicant , then, received a reply dated 02.09.1995 [Annexure A/8], informing that the concerned documents had already been supplied , and no other document would be supplied. The applicant, then, sent his reply that the documents demanded on 04.01.1995 [Annexure A/4] were not supplied , and requested for supply of them [Annexure A/9]. He again , by letters dated 12.3.1996 , 26.3.1996 [Annexure A/10 series] requested to supply the documents for preparation of defence statement. But without supplying the aforesaid documents, the respondents conducted the inquiry, even in the absence of the applicant.

4. The further case of the applicant is that the inquiry report is perverse and was prepared without examining the material witnesses viz., Signal Inspector [Con], Dhanbad and without taking into consideration his reply denying the allegations. The Disciplinary Authority also , without applying his mind, firstly by order dated 26.7.1999 [Annexure A/12], removed him from service. He preferred appeal , and the same was rejected [vide Annexure A/13].

5. The applicant, then, filed OA 191 of 2000 before this Tribunal, and by order dated 30.08.2005 [Annexure A/14] of the Tribunal, the above orders dated 26.7.1999 [Annexure A/12] and dated 19.11.1999 [Annexure A/13] were set aside, with direction to the Disciplinary Authority to pass a fresh order within one month. There was further direction that if any appeal was preferred against the order of Disciplinary Authority, the same should be disposed of within 30

days. The Disciplinary Authority, however, again, without examining the legal requirement of supplying the relevant documents, passed the impugned order [Annexure A/16], beyond the expiry of one month. The applicant filed appeal against the order of the Disciplinary Authority, but the Appellate Authority too, without considering the points raised by the applicant in his appeal [Annexure A/17], passed the impugned order dated 30.01.2006 [Annexure A/18].

6. His case also is that the order of removal could not be passed with retrospective effect.

7. The respondents have filed written statement opposing the prayer of the applicant. Their case, inter alia, is that the applicant had managed to get employment as Blacksmith in R.E , Mathura on the basis of forged and fabricated certificate, purported to have been issued by Signal Inspector [Con], Dhanbad. The charge sheet was issued to the applicant on the basis of vigilance inquiry and further verification of service particulars at Dhanbad. All the relevant documents were supplied to the applicant for his defence , and with regard to other documents demanded by him, he was given reply vide letter dated 01.02.1995 [Annexure A/5] and dated 02.11.1995 [Annexure A/8]. The applicant tried to linger the inquiry by making correspondence for irrelevant documents. He was given full opportunity to represent his side. He was intimated from time to time to attend the inquiry , but due to his absence, the inquiry was delayed. The Signal Inspector /Con/DNH was not in the list of witnesses in the charge sheet.

8. It is also their case that the inquiry officer rightly came to the conclusion that the applicant had taken employment on the basis of false and forged document. In the light of the order of the Tribunal in OA 191 of 2000, the Disciplinary Authority passed the impugned order in accordance with law, and the Appellate Authority passed his speaking order dealing with the grounds raised by the applicant in the appeal within the stipulated period.

9. The learned counsel for both the sides were heard.

10. The learned counsel for the applicant has assailed the impugned order mainly [i] on the ground of non-supply of relevant documents, and [ii] on

the ground of non-examination of material witnesses, i.e., the Signal Inspector [Con], E.C. Railway, Dhanbad, who had issued the working certificate [Annexure A/1] said to be forged.

11. In support of his submission, the learned counsel has relied on the decision of Hon'ble Supreme Court in the case of State of U.P vs. Shatrughan Lal [1998 (3) , PLR 190] decision of Patna High Court in the case of Prakash vs. Board of Director, Mithila Chhetriya Gramin Bank, Darbhanga [1996 (1) PLJR 469, decisions of CAT, Chandigarh Bench in the case of B.B. Gupta vs. Union of India and Others [(1996) 2 ATC 563], CAT, Allahabad in the case of J.M. Shukla vs. Union of India and Others [(1997) 36 ATC 164].

12. In support of his second contention, he has relied on the decision of CAT, Jabalpur Bench in the case of Hari Singh vs. Union of India [2004 (2) ATJ 416].

13. The learned counsel for the respondents has supported the impugned order. According to him, the relevant documents had been supplied. No prejudice has been caused to the applicant on any count. The impugned orders have also been passed in accordance with law and the observations made by the Tribunal in OA 191 of 2000.

14. It appears from the order of this Tribunal passed in OA 191 of 2000 that the applicant had earlier been removed from service by order dated 26.7.1999 passed by the Disciplinary Authority, and in appeal, the order was confirmed by the Appellate Authority by order dated 19.11.1999. The applicant, then, challenged both the orders. As the orders were cryptic, non-speaking, the Tribunal quashed the orders without giving any consequential benefits and directed the Disciplinary Authority to pass a fresh order within one month, giving reasons for the same so as to reflect the application of mind. The appellate authority also was directed to pass speaking order in terms of Rule 22 [2] of the Railway Servant [D&A] rules, providing the matters to be considered in appeal, and also dealing with the grounds raised by the applicant in appeal.

15. The impugned order [Annexure A/16] passed by the disciplinary authority shows that after considering the defence statement of the applicant

against the imposition of the punishment , and the letter dated 21.12.1990 of DSTE/CON/E.Railway/DH and the letter dated 6.12.1996 of Signal Inspector [Con], E. Railway and report of inquiry officer, he found that the applicant had cheated the railway administration by submitting false casual service certificate.

16. The impugned appellate order shows that the appellate authority , after considering the points raised by the applicant regarding non-supply of documents and the report of the inquiry officer and the evidence, passed his order.

17. It appears from the Memorandum of charge sheet [Annexure A/3] that the applicant has been charged for taking employment as casual blacksmith on the basis of producing forged certificate purported to have been issued by the Signal Inspector [con] E.C. Railway / Dhanbad in respect of earlier working in railway from 06.02.1979 to 15.5.1981, with the intention to cheat the railway administration. Annexure III attached with the charge memo shows that three documents were mentioned therein which the department proposed to rely in support of the charge. The documents are [i] statement of the applicant dated 26.11.1990 [ii] working certificate [for casual hammer man] in favour of the applicant for the period from 06.02.1979 to 15.5.1981 issued by the Signal Inspector [Con], Dhanbad, [iii] confidential letter dated 21.10.1990 issued by the DSTE/Con/Dhanbad , addressed to the Vigilance Department.

18. The list of witnesses proposed to be examined was mentioned in Annexure- IV attached with the charge sheet. According to that list, the witnesses were [i] Shri S.P. Chaturvedi, Chief Vigilance Inspector / CORE/ Allahabad and [ii] Shri Puneet Chawla DSTE[Cons]/RE/Dhanbad.

19. The respondents have filed the inquiry report [Annexure R/1]. The inquiry report shows that the inquiry officer relied on the letter issued by the DSTE dated 21.12.1990, wherein it was stated that in the pay sheet books for the year 1979 to 1981, the name of the applicant did not appear as casual hammer man. He also relied on the Live Register of casual labourers working in S&T organization , which was prepared by that office and subsequently cancelled by the Senior DPO/ Dhanbad, the name of the applicant did not figure

in the list of the dormant casual labourers.

20. The inquiry report further shows that the inquiry officer had also relied on the letter of the vigilance department dated 09.09.1998 in which also it is stated that in the pay sheet copy book of the years from 1979 to 1981, the name of the applicant did not appear as casual Hammer man.

21. The inquiry report further shows that on the basis of those letters, the Enquiry Oficer found the charge against the applicant proved. No witness appears to have been examined during the inquiry.

22. The penalty order of the disciplinary authority [Annexure A/16] passed in pursuance with the order passed in OA 191 of 2000 , as mentioned above, shows that the disciplinary authority had also relied on the letter of the DSTE dated 21.12.1990 as well as letter dated 6.12.1996 of the Signal Inspector before passing his impugned order.

23. The letter dated 04.01.1995 [Annexure A/4] of the applicant shows that the applicant had demanded all the three letters mentioned in Annexure -III above , as also the documents mentioned in Annexure-II attached with the charge memo but not made part of Annexure III, on the ground that they were essential for preparing effective reply to the charge sheet. The documents mentioned in Annexure II were [i] photo copy of casual labourer's card No. 105511, [ii] photo copy of confidential letter dated 10.12.1990, [iii]photo copy of pay sheet (paid vouchers) of the year 1979 to 1981 of casual /temporary status hammer men of Signal Inspector [Cons], Eastern Railway, Dhanbad, [iv] photo copy of live register of casual staff of Signal Inspector [Cons], E. Railway, Dhanbad [duly signed and verified by the controlling officer].

24. It also appears that besides the above documents, the applicant had demanded some other documents, as mentioned in the letter.

25. The reply of the Railway dated 01.02.1995 [Annexure A/5] shows that the department supplied copies of only first and second document of Annexure III, and regarding 3rd document i.e. Copy of the confidential letter dated 21.10.1990 issued by DSTE, it was stated that it cannot be supplied but may be shown at the time of inquiry. No reason had been assigned as to why this

document could not be supplied. The reply further shows that as regards other documents, it was replied that they were not to be supplied as were not related. The letter dated 22.02.1995 [Annexure A/6] shows that the applicant again requested for documents not supplied but by letter dated 2.11.1995 [Annexure A/8], it was replied that the documents have already been supplied and no other document would be supplied. It also appears that the applicant, thereafter, made further requests for the remaining documents but were not supplied.

26. Thus, though confidential letter issued by DSTE [Cons], Dhanbad dated 21.12.1990 was relied on by the inquiry officer as well as disciplinary authority, and mentioned in Annexure-III above, the same was not supplied to the applicant in spite of repeated requests. No reasonable explanation was given for this non-supply. The only explanation is that the same would be shown at the inquiry. In the case of Shatrughan Lall [*supra*], the Hon'ble Supreme Court has observed - "*In a departmental proceeding where the charge sheet is issued and the documents which are proposed to be utilized against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his requests, and he is at the same time called upon to submit reply, it cannot be said that an effective opportunity to defend was provided to him*". Therefore, in view of this decision, it is manifest that a great prejudice has been caused to the applicant due to non-supply of this document.

27. Then, it is also settled that the delinquent is entitled to copy of not only documents on which the department wants to rely and mentioned in the charge sheet but also of the documents which are relevant for the purpose of his defence. The letter of the applicant dated 4.1.1995 [Annexure A/4] shows that he had also demanded for his reply to the charge sheet some documents, including [i] photo copy of pay sheet [paid vouchers] of the year 1979 to 1981 of casual hammer men of S.I [Cons], [ii] casual live register of casual staff , [iii] fact finding inquiry report of the Vigilance Inspector. But the reply [Annexure A/5] shows that the same was refused being not relevant. But the inquiry report shows that the letter dated 21.12.1990 of DSTE [Cons] , and the report of the Vigilance Inspector, were based on those documents. The report further shows

that the paid vouchers have been advised to be kept in safe custody. The appellate authority also, in his order, has stated that DSTE has certified that the name of the applicant does not appear in the pay sheets and live register. Therefore, these documents were quite relevant for preparation of defence of the applicant and also were available with the railway, but were not supplied. The Hon'ble High Court , Patna in the case of Prakash [*supra*] has held that "*whether a document is relevant or not is to be judged from the point of view of defence of the delinquent, and where the charges against the delinquent are based on the documents, the denial of access to those documents have a deleterious and damaging effect.*"

28. In the cases of B.B. Gupta [*supra*], J.M. Shukla [*supra*] also, it has been held that "*non-supply of vital documents violates natural justice;*"

29. In this case also, as the above letter of DSTE and the Vigilance report , which is the basis of charge sheet, were based on the above documents, and the documents have not been supplied without valid reason, there has been violation of natural justice, causing great prejudice to the applicant.

30. As regards non-examination of the material witnesses, as already mentioned, two witnesses were named in Annexure-IV for examination by the department in support of the charge. They were the Chief Vigilance Inspector who had submitted his report on the basis of which charge memo was issued , and the DSTE [Cons] who had sent the confidential letter dated 21.10.1990 and under whom the applicant claimed to have worked from 06.02.1979 to 15.5.1981, as it appears from the letter dated 20.8.1997 [Annexure A/11] forwarded to them [witnesses] for their appearance during the inquiry. These two witnesses , thus, were very vital witnesses. But they have not been examined. Though, the above letter [Annexure A/11] shows that the date of inquiry was communicated to them for their appearance, but there is nothing in the inquiry report as to whether they attended the inquiry or as to why they could not be examined.

31. In the case of State of U.P vs. Saroj Kumar Sinha [(2010) 1 SCC (L&S)675], the Hon'ble Supreme Court has observed thus:-

"It is only in a case when the government servant despite notice of the date fixed fails to appears, that the inquiry officer can proceed with the inquiry ex-parte. Even in such circumstances, it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nevertheless, in order to establish the charges, the department is required to produce necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as prosecutor as well as judge". It has further been observed therein that " the inquiry officer acting in a quasi judicial authority is in a position of an independent adjudicator. He is not supposed to be a representative of the department / disciplinary authority/government. His function is to examine the evidence presented by the department even in the absence of delinquent official to see whether un-rebutted evidence is sufficient to hold that the charges are proved. In the present case, the aforesaid procedure has not been observed. Since no oral evidence has been examined, the documents have not been proved and could not have been proved against the respondents."

32. In this case also, though the inquiry is ex-parte, it was essential for the inquiry officer to examine the above two witnesses. Hence, in view of the above decision of the Hon'ble Supreme Court, it cannot be said that the documents relied upon by the inquiry officer were proved. Consequently, it cannot be said that the charges against the applicant have been proved, as the charges mainly are based on the documents of above witnesses.

33. In the case of Hari Singh [supra] , a Diesel Assistant was charge-sheeted for not informing the correct position regarding danger signal to the driver. The driver was not examined in the inquiry. The Tribunal held that he was a material witness, and as he has not been examined, the order of punishment is liable to be quashed.

34. In view of this decision also, due to non-examination of vital witnesses, the charge against the applicant cannot be said to have been proved.

35. Thus, it is apparent that in this case there has been flagrant violation of natural justice, causing great prejudice to the applicant. The

impugned orders and the whole enquiry, thus, has been vitiated. The impugned order of punishment and the order passed in appeal, hence, cannot be sustained and are, accordingly, set aside. As the matter has been very old, it would not be proper to order for fresh inquiry, after complying with the requirements of law as mentioned above. Accordingly, the OA is allowed. The respondents are directed to reinstate the applicant with effect from the date of dismissal with 50% back wages. The applicant's reinstatement must be made within a period of 15 days of the date of the receipt / production of this order, and the payment of back wages must be made within three months of receipt / production of this order. The period of absence from the date of dismissal would be treated as period spent on duty.


[A.K. Jain] M [A]
[Rekha Kumari] M [J]

/cbs/