

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:87/96
DATED THE 4TH DAY OF SEPT,2001

CORAM:HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri Jagrupram Mundrikram,
Ex Sub. Khalasi, C&W,
Carriage Superintendent Kurla
R/o.Gazi Miya Chawl,
Masrani Lane, Halao Pul,
Kurla (West),
Bombay - 400 070.

... Applicant

By Advocate Shri R.D.Deharia

V/s.

1. Union of India through
The General Manager, C.Rly,
Bombay V.T. Pin - 400 001.
2. The Divisional Railway Manager,
Divisional Office, Central Railway,
Bombay V.T.,
Pin - 400 001.
3. The Divisional Mechanical Engineer,
Divisional Office, Central Railway,
Bombay V.T., Pin - 400 001.
4. The Assistant Mechanical Engineer,
Divisional Office,
Central Railway, Bombay V.T.,
Pin - 400 001.

By Advocate Shri Suresh Kumar.

(ORAL)(ORDER)

Per Shri Kuldip Singh, Member(J)

The applicant who was appointed as substitute Khalasi was removed from service on the allegation that at the time of employment the applicant had produced a forged Casual Labour Card. Earlier he has been removed from service vide letter dated 7/2/90. The applicant made an appeal to the appellate authority on 19/2/90 which was rejected vide letter dated 26/7/90. He has

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filed an OA registered as 608/90. When the OA was taken up for hearing, the order of removal was quashed and the respondents were directed to initiate fresh enquiry within a period of six weeks and if enquiry is initiated, it will be completed within a period of six weeks from the date of initiation. If the enquiry is not initiated within a period of six weeks from today i.e (4/8/92) the applicant shall be entitled to back wages.

2. Consequent thereup vide letter dated 18/9/92, the applicant was reinstated to service and fresh enquiry was initiated vide letter of even dated 18/9/92. Enquiry Officer was also appointed and the enquiry was completed holding the applicant guilty for having procured the job on the basis of forged casual labour card for the period 18/1/81 to 18/12/81. The Disciplinary Authority passed an order dated 26/9/94 (Annexure A-1). The applicant was also given an opportunity to make an appeal, appeal was preferred and the appellate authority also upheld the order passed by the Disciplinary authority vide their order dated 30/1/95 (Annexure A-2). Against the order passed by Appellate Authority, the applicant preferred a revision which was dismissed vide letter dated 29/11/95 (Annexure A-3).

3. By the present OA, the applicant is challenging all the three orders on the ground that the same have been passed without applying the mind and is in violation of rules. Applicant states that the administration has wilfully gone ahead with the enquiry into the facts as to how forged documents had been produced. The grounds taken by the applicant is that administration has wilfully and purposely avoided to enquire into the facts as to

how, a numbered important document which is supposed to be in the custody of a responsible railway official can pass the hand, as also can make the alleged related entries, by an illiterate Khalasi. That the Prime witness such as the holder of the stock numbered document i.e. Casual Labour Card, have not been cross examined. This Court should re-appreciate the evidence. This is a hypothetical argument which does not relate to the impugned orders in this OA. Similarly, there are other several grounds taken by applicant which calls the Court to re-appreciate the evidence. With regard to the Principles of natural justice, the applicant has submitted that since the prime witnesses have not been examined and since the decision to ignore the prime witness, Shri Borwankar who was the incharge of C.W.S, Wadi nBunder at the relevant time have not been produced; so the applicant has been prejudiced. In fact, there is no evidence which may link the applicant to the charge.

4. On going through the records, we find that Shri D'Souza had expired and Shri Borwankar has already retired from service who was in charge of the relevant record for the period 18/1/81 to 18/12/81 to prove whether the applicant was working there or not. However, during the enquiry the respondents have produced pay sheets, Casual Muster Register, from where it was found that the applicant's name was found missing on the relevant dates. On this basis the enquiry was concluded, since the name of applicant was not shown and so the applicant had not worked as Casual Labour. The applicant had also submitted that L1 + 7 register on the basis of which entries are made in the casual leave card register had not been produced. Had the said register been

produced, it would have proved that the applicant had worked during the said period. However, since the name of the applicant did not appear in pay sheet produced by the respondents during the enquiry, it was concluded that the applicant was not working during the relevant period.

5. In the case of Shri Suresh B Dave V/s. The Post Master General & Ors in OA No.165 of 1987 held that Opportunity to defend, examination of witness - Petitioners sought permission to examine a witness before the Enquiry Officer - Permission denied saying that witness was not relevant - Finding that he was instrumental in lodging the report - Held, petitioners should be given opportunity to examine the witness.

6. On the basis of this judgement, applicant's counsel also submitted that since Shri ^WBorankar and D'Souza have not been examined, the applicant has been denied the opportunity to defend his case properly and non examination of witnesses vitiates the enquiry. As it has come on record that since Shri D'Souza had expired and ^WBorankar has already retired, Enquiry Officer had to rely on the documentary evidence available than the evidence of witnesses. Since the record for that particular period has been produced and we have gone through the same, and that shows that there was some evidence which proved that during the period in dispute applicant did not work.

7. Therefore we find that the applicant fails to establish that he had been working during that period and the Disciplinary Authority has passed a correct order.

8. The Disciplinary Authority therefore rightly accepted the report of the Enquiry Officer. It has been held by Hon'ble

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Supreme Court of India in the case of R.S. Saini V/s. State of Punjab and Others reported at 1999 (2) SC SLJ 113 as under :

"Departmental Enquiry-Judicial Review Findings of the enquiring authority-Enquiring authority is the sole judge of the facts so long as there is some legal evidence to substantiate the finding-Adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in the Writ proceedings."

Since in this case also from the evidence on record it has been held that during the period the applicant had not worked and the Casual Labour Card contained forged entries, that cannot be questioned before us on the ground of non production of other evidence as suggested by Counsel for the applicant. Disciplinary Authority has passed the order after due consideration and the appellate authority has upheld the order and the revisionary authority has also upheld the same, we are of the opinion that the conclusion has been correctly reached.

9. In the circumstances, we are of the considered opinion that the applicant has no case. The O.A. is without any merit. O.A. stands dismissed. No costs.



(SMT.SHANTA SHASTRY)
MEMBER(A)



(KULDIP SINGH)
MEMBER(J)

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