IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1270/93

16.10.98
Date of Decision:

A.A.A. Sattar .. Applicant

Shri D.V.Gangal .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri S.C.Dhawan .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member ~~(A)~~

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal ? ✗

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.1270/93

Pronounced this the 16th day of October 1998

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Anis Ahmed Abdul Sattar
Ex-Khalasi,
Chief Inspector of Works,
Central Railway, Bhusawal.

By Advocate Shri D.V.Gangal ... Applicant

V/S.

Union of India through

1. The General Manager,
Central Railway,
Bombay V.T.

2. The Dy.Chief Engineer,
(Construction)(Planning)
Central Railway, Bombay VT.

3. The Executive Engineer,
(Construction) Bridges,
Central Railway, Manmad.

4. The Divisional Railway Manager,
Central Railway, Bhusawal.

By Advocate Shri S.C.Dhawan ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A)

This application has been filed seeking the reliefs of (a) setting aside the order dated 14.2.1992 of the disciplinary authority imposing the punishment of removal from service and order dated 18.9.1992 of the appellate authority rejecting the appeal, (b) the charge-sheet issued is illegal and the same should be quashed, (c) to reinstate the applicant in service with full back wages and continuity of service from the date of removal to the date of reinstatement.

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2. The applicant while working as casual labour on Central Railway was issued chargesheet dated 6.9.1989 for major penalty with the charge of securing employment through fake casual labour service card. The enquiry officer was appointed and the enquiry was conducted. Copy of the enquiry report was furnished to the applicant. The disciplinary authority as per order dated 14.2.1992 imposed punishment of removal from service. The applicant filed an appeal against the same and the appeal was rejected as per order dated 18.9.1992 of the appellate authority. Being aggrieved by this punishment, the present OA. has been filed on 1.11.1993 seeking the above referred reliefs.

3. The applicant has assailed the impugned punishment order advancing the following grounds :- (i) The charge-sheet is invalid as the Annexures to the charge-sheet have not been signed by the disciplinary authority. (ii) The documents listed in the charge-sheet had been not supplied to the applicant even inspite of making a specific request for the same. (iii) The charge is not very clear. The findings in the enquiry report refers to non working of casual labour for certain period while the charge in the charge-sheet refers to the fake casual labour card. (iv) The findings of the enquiry officer were not based on the evidence as the signatures of the Inspector of Works who had verified the working as a casual labour card was not got verified. (v) Two witnesses had been examined by the enquiry officer although no witnesses were cited in the charge-sheet. (vi) The disciplinary authority had differed with the findings of the enquiry officer but the reasons recorded by the disciplinary authority were not conveyed to the applicant before imposing punishment and therefore the punishment order

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is illegal as it is in violation of the law laid down by the Hon'ble Supreme Court in the case of Narayan Mishra vs. Union of India. (vii) The orders of disciplinary authority and appellate authority are bad in law as they are not based on the findings of the enquiry officer.

4. The respondents have filed written reply opposing the application. The respondents have submitted that the disciplinary proceedings had been held following the laid down rules and the documents listed in the charge-sheet had been supplied to the applicant. It is further contended that the disciplinary authority had not differed with the findings of the enquiry officer and as per the findings of the enquiry officer the charges were proved. The respondents further submit that there is no infirmity in the disciplinary proceedings and the grounds taken by the applicant in challenging the impugned orders are devoid of merit and therefore the application deserves to be dismissed.

5. The applicant has not filed any rejoinder reply for the written statement of the respondents.

6. We have heard the arguments of Shri D.V. Gangal, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents. The material brought on record has also been given careful consideration.

7. The grounds taken for challenging the impugned order have been detailed earlier and the same will be considered one by one to find out if any of the grounds vitiate the impugned orders. The first ground is that the Charge-sheet is invalid as the Annexures had not been

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by the disciplinary authority
signed. This ground has not been advanced in the application and was advanced in the oral arguments while reference was made to the charge-sheet. The respondents have contested the contention stating
of the applicant that as per the rules laid down, the disciplinary authority is not required to sign the Annexures. We have gone through the Annexures and do not find that there is any coloumn where the disciplinary authority has to sign and therefore we accept the statement of the respondents. We, accordingly, find no merit in this contention of the applicant.

8. The second ground advanced by the applicant upon
is that the documents relied and listed in the charge-sheet had been not furnished to the applicant. In support of his contention, the applicant has filed M.P.No.399/98 bringing on record a copy of his letter dated 13.9.1989 addressed to the disciplinary authority according to which, the applicant had made a request to furnish the copy of the documents listed in the charge-sheet. The respondents have countered this claim of the applicant stating that the relied upon documents had been furnished to the applicant. In this connection, the respondents brought out the copy of the letter dated 21.11.1989 addressed to the applicant during the hearing. As per this letter, it is noted that the relied upon documents as requested by the applicant had been furnished. Keeping this in view, the contention of the applicant for non-supply of the documents is not tenable. In any case, on going through the proceedings of the enquiry, we do not find that at any stage the applicant had raised the issue with regard to non-supply of the listed documents. In view of these facts, this ground raised by the applicant is without any substance.

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9. The third ground is that the statement of two witnesses had been recorded, although no witness was cited in the chargesheet. On going through the chargesheet, it is noted that the contention of the applicant to the extent that no witness had been cited in the chargesheet is correct. However, on going through the proceedings of the enquiry, we find that the applicant himself had made a request for calling Shri D.N.Ahire, Store Chaser as witness. His statement had been recorded and the applicant had cross-examined him. The statement of one more witness had been also recorded and the applicant had also cross-examined him. The applicant has not brought out any rules which have been violated in calling the witnesses not cited even though in the chargesheet. If the witnesses were called and the applicant had not raised any objection and cross-examined them then, We are unable to comprehend as to how any prejudice has been caused to the applicant. If during the enquiry any witnesses are required to be called, the enquiry officer can certainly call for them the same is if not objected to by the delinquent. In this case, there was no such objection and the applicant had been given full opportunity to cross-examine the witnesses. Keeping these facts in view, we are unable to find any infirmity in the recording of the evidence of the two witnesses by the enquiry officer.

10. The 4th contention of the applicant is that the chargesheet is vague as the charge refers to the cadual labour card being fake while the findings of the enquiry officer are with regard to entries made for a certain period of working in card being fake. The applicant during

arguments repeatedly stressed on this point. We have gone through the documents and are unable to find any merit in the contention of the applicant. The statement of imputation is very specific that for certain period indicated in the casual labour card, the applicant had not actually worked for this period and therefore the casual labour card containing these entries was fake. At nowhere it is mentioned in the chargesheet that the casual labour card itself was fake or bogus. The causal labour card may be genuine but the entires made in the card for the period during which the applicant had not engaged as casual labour make it fake. Accordingly, this ground for challenge does not deserve any consideration.

11. The 5th ground for the challenge and which is a trump card of the applicant and was the thrust of the oral arguments is that the disciplinary authority differed with the findings of the enquiry and the procedure to be followed in such an event has been violated refering to the judgement of the Hon'ble Supreme Court in the case Narayan Mishra vs. Union of India, 1969 (3) SLR 657. The reasons recorded by the disciplinary authority while differing with the inquiry officer were not conveyed to the applicant to submit his defence before imposing the punishment by the disciplinary authority. The respondents have, however, controverted this submission of the applicant stating that the enquiry officer has held that the charge was proved and the disciplinary authority had only accepted the findings of the enquiry officer and this was not a case of dissenting with the findings of the enquiry officer. We have carefully considered the counter arguments advanced during the

hearing. The main contention of the applicant is that as per the findings of the enquiry officer the charge is not proved as the enquiry officer has stated that there was no record available to find out as to which department the casual labour card No. 19217 was issued. The respondents' contention is that the findings in item (ii) are irrelevant as the charge was with regard to the fake entries of the working for a certain period in 1979 & 1980 in the card and to this extent the enquiry officer had held that the charge was proved in findings in item (i). On carefully going through the findings of the enquiry officer as well as the order of the disciplinary authority, we are not persuaded by the view taken by the applicant that the disciplinary authority had differed with the findings of the enquiry officer. The charge in the charge-sheet is specific that the entires made in the card for the working of the applicant for casual labour for a certain period were fake. The enquiry officer has clearly stated in item (i) of the findings that based on the evidence on record, the service period recorded in the casual labour card is incorrect. The second finding with regard to the issue of the card is not really relevant to the charge and the enquiry officer had only made a observation that in the absence of record, it is difficult to find out as to which department the casual labour card No. 19217 was issued. We are inclined to agree with the contention of the respondents that this finding/observation of the enquiry officer is not very relevant as whether the card itself was fake or not is not very relevant as the main issue involved was with regard to the period of working mentioned in the casual labour card.

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Keeping these views in focus, we are of the view that the disciplinary authority had not differed with the findings of the enquiry officer. In fact, the disciplinary authority in its order has supplemented the reasons in support of the findings to establish that the charge is proved based on the evidence on record. In view of this, we do not find that there is any violation of the law laid down by the Hon'ble Supreme Court in the case of Narayan Mishra.

12. The 6th ground of attack is that the orders of disciplinary authority and appellate authority are bad in law as they do not indicate the application of mind and the same are not based on the findings of the enquiry officer. This contention of the applicant does not remain tenable in view of our observations in the earlier para with regard to differing of the disciplinary authority with the findings of enquiry officer. This ground has been taken by the applicant perhaps on the basis that the enquiry officer has given the findings that the charge is not proved. This is not so as per our observations earlier. We have gone through the order of disciplinary authority as well as the appellate authority and do not subscribe to the view of the applicant The orders passed by both the authorities have given the reasons in support of the findings and are speaking orders and we do not find any infirmity in them.

13. The applicant during the arguments was at pains to take us through the proceedings of the enquiry to advance his plea that findings of the disciplinary authority while differing with the enquiry officer are not supported by the evidence on the record. The counsel for the applic referred to the several questions and the reply given

by the two witnesses in their statements to highlight that at no stage both the witnesses had indicated that the records of the concerned Supervisor were checked up to establish the genuine-ness of the casual labour card. The applicant also raised a plea that he being an illiterate could not distinguish as to the designation of the Supervisor under whom he was engaged as a casual labour. The applicant also raised an issue that the signature of the Inspector of Works who had engaged the applicant during the period stated to be fake was not got verified. The entire effort of the counsel for the applicant during the argument was to establish that the findings of the disciplinary authority are not supported by the evidence and the Tribunal should go into evidence and the record of the inquiry proceedings and record its own findings after reappreciating the evidence. After going through the order of the disciplinary authority, we find that the findings are supported by the evidence brought on record and we do not agree with the contention of the applicant that the findings are based on no evidence. Hon'ble Supreme Court in several judgements such as State of T.N. & Anr. vs. S.Subramaniam, (1996) 33 ATC 317. B.C.Chaturvedi vs. Union of India & Ors. (1996) 32 ATC 44. Union of India & Ors. vs. B.K.Srivastava, 1998 (1) S.C.SLJ 74. has held that it is not the scope of judicial review that the Tribunal should reappreciate the evidence and reach its own conclusions. The judicial review is only to be confined to see whether the conclusion is based on the findings of record or conclusion is based on no evidence. The evidence cannot be reappreciated by the Tribunal or High Court as it is not an appellate court.

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Keeping in view the law laid down by the Hon'ble Supreme Court, we are not persuaded by the arguments advanced by the applicants and do not find any case for reappreciation of the evidence and come to our own conclusion.

14. After deliberating on the various grounds raised by the applicant assailing the impugned orders, we are unable to find merit in any of the grounds. In view of this, the punishment orders do not suffer from any infirmity calling for judicial interference.

15. During the arguments, the applicant made a plea that the punishment imposed is very harsh and since the applicant had been engaged as a casual labour for more than 10 years, his case needs a sympathetic consideration. This plea has not been taken up in the original application and has been raised during arguments only. The learned counsel for the respondents strongly opposed this contention of the applicant stating that the applicant had secured employment on the basis of a fake casual labour card and does not deserve any sympathy. In the present case, the punishment has been imposed on the applicant of removal from service after conducting enquiry with the charge that he had secured employment on the basis of fake casual labour card. The applicant has challenged the punishment order through this OA. on several grounds.

We have recorded our findings above and do not find that any of the grounds survive based on which the impugn punishment orders could be vitiated.

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It is, therefore, established that the engagement of the applicant had been obtained fraudulently and such an engagement could be legitimately treated as voidable at the option of the employer. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. M. Bhaskaran, (1996) 32 ATC 94, wherein the same issue has been dealt with. In this case also the petitioners had secured engagement fraudulently on the basis of bogus casual labour card. After following the due process of disciplinary proceedings, the punishment of removal from service was imposed. The petitioner had challenged the removal order on the plea that since the applicant had been working as a casual labourer for several years, the employer was estopped from terminating the services. The Hon'ble Supreme Court in this judgement has held that merely because the respondent-employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour. Keeping this in view, we do not find any merit in the contention of the applicant and consider the matter for any lesser punishment than imposed through the impugned orders.

16. In the light of the above discussion, we are unable to find any merit in the OA. and the same is dismissed accordingly. No order as to costs.

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA) 16.10.98
VICE CHAIRMAN

mrj.