

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1208 OF 1994.

Date of Decision: June 02, 1999.

Farug Azamkhan, Applicant.

Shri D. V. Gangal, Advocate for
Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri V. S. Masurkar, Advocate for
Respondent(s)

CORAM:

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

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

(1) To be referred to the Reporter or not? *No*

(2) Whether it needs to be circulated to *No*
other Benches of the Tribunal?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1208 OF 1994.

Dated this Wednesday, the 2nd day of June, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Faruq Azamkhan,
Khalasi, working under the
Permanent Way Inspector,
(MOD), Central Railway,
Manmad.

Residing at -

C/o.: Azamkhan Anwarkhan,
At Chandanwadi, F.C.I. Road,
At Post Manmad - 423 104,
Dist. Nasik.

(By Advocate Shri D. V. Gangal)

... Applicant.

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.

2. The Chief Workshop Manager,
Engineering Workshop,
Central Railway,
Manmad.

3. The Bridge Engineer,
O/o. the Chief Workshop
Manager,
Engineering Workshop,
Central Railway,
Manmad.

... Respondents.

(By Advocate Shri V. S. Masurkar)

OPEN COURT ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed under

Section 19 of the Administrative Tribunals Act, 1985.

The respondents have filed reply. We have heard

Shri D. V. Gangal, the Learned Counsel for the applicant

and Shri V. S. Masurkar, the Learned Counsel for the

Respondents.

2. The applicant was employed as a Casual Labourer in the Central Railway. Subsequently, the department discovered that the applicant had obtained the job by producing a false labour card. On that allegation, the department issued a charge-sheet against the applicant dated 20.06.1990. The applicant denied the allegation in the charge-sheet. Then an enquiry was conducted. The Inquiry Officer made a report that the charge is proved. On that basis the Disciplinary Authority passed an order dated 10.05.1993 by imposing the penalty of removal from service with effect from 18.05.1993. The applicant preferred an appeal but the Appellate Authority dismissed the appeal by order dated 10.08.1993. Being aggrieved by this order, the applicant has approached this Tribunal. The applicant's case is, that the allegations in the charge-sheet about applicant producing a false or bogus Labour Card is false. That the applicant was not given personal hearing and that there was violation of principles of natural justice. It is also alleged that the applicant was sick during the relevant time when the Inquiring Authority proceeded with the ex-parte enquiry. Then it is further alleged that the Inquiry Officer had threatened the applicant to plead guilty and when the applicant did not agree, the Inquiry Officer held out threats. The applicant complained against the same but with no success. He has therefore ^{whole} alleged that the ~~full~~ enquiry is vitiated. It is also his case that the applicant ^{was} not given personal hearing by the Appellate Authority. It is also his case that there is a delay of two years in the Disciplinary Authority passing the final order after the submission of the Inquiry Report.

The respondents in their reply have mentioned the facts and circumstances of the case and have justified the action taken against the applicant. According to the ^{referred} applicant, the enquiry has been done as per rules and the applicant had sufficient opportunity to present his case but he declined to participate in the enquiry. It is therefore stated that the applicant has not made out any case for interference with the orders of the Disciplinary Authority or Appellate Authority.

3. At the time of hearing, the Learned Counsel for the applicant pressed into service the above contentions taken in the Original Application. His main argument is that the enquiry is vitiated since the Inquiry Officer was prejudiced and that he even threatened the applicant if he does not plead guilty. He commented on the ex-parte enquiry held when the applicant was not well. He did not address arguments on merits, since the applicant had not participated in the enquiry and he has not adduced any ^{evidence} documents in his defence. He has also commented on not giving personal hearing to the applicant inspite of the request made by the applicant. He therefore submitted that it is a fit case in which the order of removal from service should be set aside and the matter should be remanded to the Disciplinary Authority for fresh disposal of the case according to law. On the other hand, the Learned Counsel for the respondents submitted that no ground of prejudice has been made out against the ^{and} Inquiry Officer/that the enquiry has been done as per rules after giving sufficient opportunity to the applicant to participate in the enquiry. He also submitted that the Appellate Authority has applied its mind to the facts of the case and no ground is made out

for interfering with the orders of the respective authorities.

4. Though we have heard at length on the rival contentions, we find that the applicant's grievance that the Appellate Authority did not give him personal hearing is sufficient to remand the matter to the Appellate Authority. In the appeal, which is produced both by the applicant and also by the respondents, there is specific request made by the applicant that he may be given personal hearing before deciding the appeal. In the order of the Appellate Authority, there is no mention on this request of the applicant or about the rejection of the request on any ground. Further, the order of the Appellate Authority does not show that he has considered all the grounds urged by the applicant in the memorandum of appeal.

The Learned Counsel for the applicant invited our attention to the decision of the Supreme Court in Ram Chander V/s. Union Of India reported in 1986 ATC 47 where the Supreme Court has observed that consideration of fair play and justice also require that the appellant should be heard by the Appellate Authority. In the present case, there is a specific request made by the applicant for personal hearing. As already stated, the Appellate Authority has not even mentioned in the order as to why he did not give a personal hearing and he has not expressed any view on this matter. For a casual labourer, the question of removal from service is like a question of life and death. Hence, when serious action is taken, in all fairness

the applicant should have been given sufficient opportunity or should have been heard in person before taking a final decision in the matter. We are not expressing any opinion on the rival contentions or merits of the case or about the procedure adopted by the Inquiry Officer. We are leaving all the questions open so that the applicant may urge all these contentions before the Appellate Authority at the time of personal hearing. Hence, in the facts and circumstances of the case we feel the matter should be remanded to the Appellate Authority for disposal of the appeal according to law.

5. In the result, the application is partly allowed. The order of the Appellate Authority dated 10.08.1994 is hereby set aside. The matter is remanded to the appellate authority with a direction to give the applicant a personal hearing alongwith his Defence Assistant and then dispose of the application according to law. All contentions on merits are left open. Since this is a charge-sheet of 1990, it is desirable that the Appellate Authority should dispose of the appeal expeditiously and preferably within a period of four months from the date of receipt of the order. No order as to costs.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A).

Re-consideration
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.