

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 758/94

Date of Decision : 20<sup>th</sup> October 2000

S. Mehboobkhan Applicant.

Shri L.M. Nerlekar Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri S.C. Dhawan Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri B.N. Bahadur, Member (A)

The Hon'ble Shri S.L. Jain, Member (J)

- (i) To be referred to the Reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

*S.L. Jain*  
(S.L. JAIN)  
MEMBER (J)

mrj\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:758.94

the 20<sup>th</sup> day of October, 2000

CORAM: Hon'ble Shri B.N.Bahadur Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Sharifkhan Mehboobkhan  
C/o Sameer Dry Food Store  
Mohammadia Apartment  
Simla Bakri Road  
1st Rabodi - Thane.

...Applicant.

By Advocate Shri L.M.Nerlekar

V/s

1. Union of India through  
Divisional Railway Manager  
Central Railway, Bombay VT.

2. Assistant Mechanical Engineer,  
Central Railway, Bombay VT.

3. Senior Divisional Mechanical  
Engineer, Central Railway,  
Bombay VT.

...Respondents.

By Advocate Shri S.C. Dhawan.

O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for quashing of the order of the Appellate Authority dated 3.11.1993, confirming the penalty of removal from service enforced against the applicant by the Disciplinary Authority vide its order dated 24.12.1992 alongwith a declaration that the applicant continues in the service, entitled to all consequential benefits including backwages and continuity in service.

2. The applicant was working as Substitute Khalasi under Carriage Superintendent, Bombay VT on 3.9.1983 in the Grade of Rs. 196 - 232 (RS), on 20.6.1989 a memo was issued alleging that

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he had produced forged casual labour card No. 150465 in order to get himself appointed in regular service of Substitute Khalasi (Exhibit I). On 28.6.1989 he submitted a representation and requested to supply him copies of the documents relied by the Disciplinary Authority, he alongwith his ARE inspected the documents on 2.8.1989, submitted the reply to the charge sheet dated 12.7.1989 denied the allegations levelled against him, he was supplied with the copy of the Enquiry Officer's report and represented against the same, The Disciplinary Authority held him guilty and passed the penalty order of removal from service. Appealed against the same which was rejected by the Appellate Authority vide order dated 3.11.1993.

3. The grievance of the applicant is that he was not supplied the copies of the documents relied by the Disciplinary Authority, Casual Labour Card No. 150465 was issued by the staff working in PW I's office Trombay, no presenting officer was appointed, the charge sheet do not contain the names of the witnesses, still the Enquiry Officer examined five witnesses named M.J. Patil, D.R. Ballal, B.N. Varde, S.S. Pardeshi, S.B. Pagi. The charge memo contains two documents but the Enquiry Officer took into consideration the other documents, the witnesses were examined without informing the applicant well in advance and was taken by surprise. The applicant was cross examined by the Enquiry Officer, The applicant was not examined after the prosecution evidence was over. The Enquiry Officer's finding which was based on no evidence was accepted by the Disciplinary Authority without application of mind. The Appellate Authority also decided the appeal without application of mind. Hence this OA for the above said reliefs.

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4. The respondents resisted the claim and alleged that the application is mis-conceived and not maintainable as the applicant has suppressed the material facts. The applicant has not come with clean hands. The Tribunal has no jurisdiction to re-assess and re-appreciate the evidence. Relationship of master and servant came into existence on the basis of the fraud committed by the applicant by producing forged casual labour card. Copy of the documents relied in Charge sheet were supplied to the applicant. After going through the documents the applicant relied to the charge sheet. The applicant himself desired to examine the witnesses and the witnesses were examined during the course of the enquiry. The applicant was afforded an opportunity to cross examine the same. No statement were recorded earlier and not given to the applicant. The applicant was questioned after the prosecution evidence was over. Hence prayed for dismissal of the DA alongwith costs.

5. The learned counsel for the applicant relying on 1998 (1) CLR 1280 Radhakrishna Setty vs. Deputy General Manager (Disciplinary Authority), Indian Overseas Bank, Central Office, Madras & Anr. has argued that in the present case the Presenting Officer was not appointed, though it is not necessary to appoint the Presenting Officer. In such circumstances, role of the enquiry officer is an important person and on him depends whether enquiry would be fair and impartial deserves to be examined. He further argued that an enquiry officer cannot play a role of prosecutor, if he does, enquiry proceedings would be vitiated.

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In this respect, he relied on para 11 of the judgement which is as under :-

" In a departmental proceedings the inquiry officer is an important person. When he is the key person, on him depends whether the enquiry would be fair or impartial. No doubt, the Inquiry Officer does not function like a Court and its proceedings also cannot be equated with the proceedings of the Court. Further strict rules of Evidence Act would not apply to its proceedings but certainly the principles which are based on the rules of natural justice would definitely apply. Certainly the inquiry officer may obtain all information, material for the points under enquiry from all sources and through all channels without being fettered by rules and procedure which govern the proceedings in the Court. The only obligation which the law casts upon them while eliciting the truth cannot go beyond his limit as an Inquiry Officer and play the role of a Prosecutor giving an indication that he was not fair and that he was biased. The Supreme Court in the case of Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719: 1963-II-LLJ-392 (SC), has laid down that if the inquiry officer also acts as a Prosecutor or witness then there is clear violation of rules of natural justice and his findings are liable to be set aside."

On perusal of the same, we have to arrive at the conclusion that while <sup>eliciting</sup> visiting the truth, whether the enquiry officer has gone beyond his limit and played the role of prosecution giving indication that he was not <sup>fair</sup> and that he was biased.

6. On perusal of Rule 9 (9)(iv)(c) we are of the considered opinion that it is left to the discretion of the disciplinary authority to appoint a presenting officer to conduct the enquiry.

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7. The learned counsel relied on 1984 II L.L.J 224 Rajinder Kumar Kindra vs. Delhi Administration & Ors. and argued that if a domestic enquiry findings are based on no evidence or on conjectures and surmises, enquiry is vitiated.

" It is well settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either ipse-dexit or based on conjectures and surmises of the authority concerned, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The Industrial Tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non application of mind."

We agree with the said proposition of the law.

8. The learned counsel for the applicant relied on 239. Swamy's CL Digest 1993, Baikunthanath Sethi vs. Union of India & Ors. decided by CAT Cuttack Bench which lays down that "mere suspicion cannot take <sup>place</sup> of proof and guilt inferred in domestic enquiries though standard of proof is not same as in criminal trial". We agree with the said proposition of law.

9. The learned counsel for the applicant relied on 484. Swamy's CL Digest 1995/2, Khairati Lal vs. Commissioner of Police, Delhi & Ors., decided by Principal Bench, New Delhi which lays down the proposition that when the finding of the enquiry officer is not based on sound reasoning and is perverse, dismissal of the delinquent cannot be sustained. We are in agreement with the said proposition of law.

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10. The learned counsel for the applicant relied on 1986 II L.L.J. 221 Anil Kumar vs. Presiding Officer & Ors. and argued that it is the duty of the enquiry officer to apply his mind to the evidence and given conclusions supported by reasons and if enquiry officer giving ipse-dixit conclusions, the finding of enquiry officer and thereafter of Disciplinary Authority based on such enquiry report is unsustainable. We agree with the said proposition of law.

11. We proceed to examine the case in hand keeping in mind the above referred proposition of law.

12. The applicant has contended that he was not supplied with the copy of the documents. On perusal of the record, we find that there is an acknowledgement of the applicant regarding receipt of the charge memo along with the documents. In addition to it, in a preliminary enquiry in answer to the Question No. 1, he has admitted that he has received the copy of the chargesheet and the documents. In answer to Question No. 4 whether he wants any additional documents from the defence point of view, he has stated that the said documents were supplied. Thus, the ground that he was not supplied with the copies of the documents relied by the disciplinary authority fails. It is suffice to say that the applicant has come to the Tribunal with false plea in this respect.

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13. Casual Labour Card was issued by PWI, Trombay. It is true that the said Labour Card was not the part of the documents attached to the chargesheet.

14. In view of the decision already referred above, Radhakrishna Setty vs. Deputy General Manager, Indian Overseas Bank, Central Office, Madras, reported in 1978 1 CLR 1280, it is not necessary that a Presenting Officer must be appointed for conducting the enquiry.

15. The applicant has also the grievance that during the course of enquiry, the enquiry officer examined the witnesses whose names were not mentioned in the chargesheet without informing him well in advance. On perusal of the disciplinary proceedings file, we find that the witnesses examined by the enquiry officer were the witnesses which were asked for by the applicant. It is suffice to state that during the course of enquiry the said witnesses were examined by the enquiry officer and an opportunity to cross-examine them was afforded to the applicant. Thus, the procedure adopted by the enquiry officer was not proper one. The enquiry officer ought to have permitted the applicant to examine the said witnesses and then to ascertain the truth. He was within his rights to put such questions as may be relevant to the issue.

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16. On perusal of the enquiry officer's report, we find that the enquiry officer has relied on pay sheet of daily rated casual labour for the period 4.10.1979 and casual labour register in para 6 (3) of his report which was not brought on record during the course of proceedings. Hence, it is held that the enquiry officer has taken into consideration the extraneous matter.

17. On perusal of the enquiry proceedings, we are of the considered opinion that the applicant was examined after conclusion of the prosecution witnesses. Hence, the said plea of the applicant is false to his knowledge. It is to be mentioned that the said examination was not proper as the enquiry officer put Question Nos. 3,4,5 to the applicant which cannot said to be the part of the prosecution evidence and by perusal of the same, it can be said that the enquiry officer played the role of prosecutor by cross-examination of the applicant.

18. The learned counsel for the applicant argued that it is a case of no evidence. Hence, it becomes necessary to go through the evidence on record without appreciating it.

19. During the course of enquiry, Shri M.J.Patil was examined on 20.6.1989, further examination on 18.9.1991 and again recalled for further examination on 27.4.1992. Shri S.S.Pardesi and Shri P.S.Gaitonde were examined on 19.6.1991. Shri D.R.Ballai was examined on 18.3.1992. Shri D.R.Ballai was re-examined on 28.1.1993.

*J. L. Patil*

20. If we peruse the evidence of Shri M.J.Patil who first claims that the applicant did not approach him but he approached the Head Clerk. In cross-examination when he was further called for examination, he has to admit that the applicant has approached him as directed by O.S. along with Casual Labour Card. He has seen his service card and he did not suspect that it was forged casual labour card. Shri D.R.Ballai in whose period the applicant was appointed on the basis of the alleged forged casual labour card admits that he has interviewed the applicant who has produced the casual labour card and he did not suspect its genuine-ness. He further stated that it was not verified by this office nor was there any machinery available with C.S.V.T. for such verification. He admits that the applicant has produced letter dated 22.9.1983 addressed to Additional D.R.M., BBVT requesting for employment as casual labour.

21. Shri V.N.Varade states that letter dated 22.4.1988 was issued by his office. He admits that register in respect of issue of casual labour card was maintained by his office. He produces the register and states that casual labour cards were issued on demand from the labourers. He is not able to state about the existence of the unit at the relevant time. When he was asked to answer the question, "Question : It is observed from your office letter cited above that the Card No. 150465 was not issued from your office but it has not been stated that it was not issued by your office. Do you agree ? The answer was, it

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was not issued by this office and no further comments about the question. A further question was asked to him, Question - it is seen from the register that some casual labour card had been issued from PWI confirm and the answer was - this officer has issued some card to PWI (SWTM). This unit was known previously as S.W. He clarified that this is as per record. An answer to further question : Please say whether PWI, TMR was working under the jurisdiction of Excn.DR. The answer was : I am not aware of this. Thus, his evidence is only to the effect that no casual labour card was issued from his office to the applicant but his office has issued some card to PWI SWTM, BY. which was known previously as the Special Works.

22. S.S.Pardesi claims that he has verified the casual labour card and after verification he has submitted the report to his office. When he was asked - Have you personally verified the record and the answer is - Yes. But during cross-examination, after perusal of the alleged casual labour card, he states that there was no post of PWI TM, By. at that time and in this respect, he has orally made enquiries with PWI TT, By and got confirmed orally from Exen (C) DR. Thus, statement of Shri S.S.Pardesi leads us nowhere. P.S.Gaitonde was an employee in the office of the recruitment and he states nothing about the forged casual labour card but only states about the person holding post Shri M.J.Patil, D.R.Ballai and other employees.

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23. Keeping in view the above evidence, without appreciating it, we are of the firm opinion that there is no evidence on the basis of which one can arrive to a conclusion that the applicant produced a forged casual labour card to secure the job.

24. In view of our finding in earlier paragraphs, this is a case where the enquiry officer has played the role of prosecutor, taken into consideration the extraneous matter without notice to the applicant, adopted the procedure not known to law and is a case of no evidence.

25. In the result, O.A. is allowed. Order of the disciplinary authority and the appellate authority dated 24.12.1992 and 3.11.1993 respectively deserves to be quashed and is ordered to be quashed and set aside. It is ordered that the applicant be reinstated in service within a period of three months from the date of receipt of a copy of this order with all consequential benefits including back wages. No order as to costs.

S.L.J.

(S.L.JAIN)

MEMBER (J)

B.N. Bahadur

(B.N. BAHADUR)

MEMBER (A)

mrj.