

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1134/95

DATE OF DECISION: 24th January 2000

Sshri Ankush Ramchandra Shinde Applicant.

Shri D.V.Gangal Advocate for
Applicant

Versus

Union of India and others Respondents.

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

CORAM

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

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

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

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

(3) Library. yes.

S.L.Jain
(S.L.Jain)
Member(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO:1134/95

the 25th day of JANUARY 2000

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

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

Ankush Ramchandra Shinde
Ex. M.R. Khalasi,
Railway Bldg.,
No.543, Near N.G. Workshop
Kurduwadi.

...Applicant.

By Advocate Shri D.V.Gangal.

V/s

1. Union of India through
The General Manager,
Central Railway, Bombay VT.
2. The Additional Divisional Railway
Manager, Solapur Division,
Central Railway, Solapur(Mah.)
3. The Divisional Electrical Engineer,
Divisional Railway Manager's office
Solapur Division, Central Railway
Solapur (Mah.)

...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 to quash and set aside the inquiry proceedings, removal order dated 23.6.1989 and appeallate order dated 4.5.1994 with all consequential benefits alongwith costs.

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2. The applicant was working as a monthly rated Khalasi at Kurduwadi was served with the charge sheet dated 29.9.1988, inquiry proceeded, OA 114/91 was filed against his removal from service which was allowed by the Tribunal vide order dated 1.3.1994 with the direction to the Appellate Authority to give a personal hearing to the applicant in respect of the appeal preferred by the applicant and then pass a speaking order in accordance with law. In compliance of the same, order dated 4.5.1994 was passed. The applicant filed C.P. 16/95 which was decided on 24.4.1995.

3. The grievance of the applicant is that the charge which was neither specific nor clear but vague one, the Enquiry Officer conducted the enquiry in absence of the notice for exparte enquiry on 15.5.1989, copies of the documents not supplied, signature of the applicant were not obtained on the enquiry proceedings, on 24.5.1989 the applicant was examined by the Enquiry Officer and the defence assistant cross-examined him, defence assistant was under the pressure of the Railway Officers, Finger Print Inspector's report was relied on document, copy of which was not supplied to the applicant, he was not examined during the course of disciplinary proceedings still his report was relied on, he has not produced any Labour service Card, facts recorded in this statement which he did not state, he does not know English, the enquiry proceedings were not explained to him in Marathi, he was asked to submit the photo which he submitted,

misuse of the same is being by pasting them on the Labour Service Card. Even in spite of the direction in OA 114/91, he was not afforded personal hearing and a false fact regarding the same was mentioned in the file. All the above irregularities prejudiced the defence and the applicant's case. Hence this OA for the above said relief.

4. The respondents have resisted the claim denying the allegation levelled against them and alleged that the OA is barred by time, application does not disclose any cause of action, misconceived and not maintainable in law as no liberty was granted to file any fresh application. Thereafter, the applicant has not come with clean hands as he has suppressed material facts knowingly and deliberately, regarding appointment of defence assistant, a Casual Labour Card was submitted by the applicant. In the year 1987, while conducting a finger print inspection of the unit, it was detected that the finger print of the left hand thumb impression on the said card did not match and was not of the applicant but of some other person, the Card does not belong to the applicant and he had not worked at the unit mentioned therein during the period stated therein and there were alteration and over writings. The applicant was charged with misconduct for impersonation as the left hand thumb impression was non identical. In reply to the charge sheet the applicant admitted that the casual labour card is a used one and the thumb impression of non-identical person may be possible. The enquiry

was conducted, the applicant and the defence counsel participated in the enquiry, signed the enquiry proceedings. During the course of the enquiry the applicant admitted that he had not worked with PW I Uruli 1980, from where the Casual Labour Card is supposed to have been given to the applicant alongwith the fact that as he was not having the Casual Labour Card, his father gave him a card from unknown person and he submitted the said bogus card. Thereafter the penalty order dated 23.6.1989 was served on the applicant.

5. The applicant has filed M.P. 674/95 for condonation of delay on the ground that respondents obtained the receipt/acknowledgement on 2.5.1994 on blank paper on the pretext that it is for recording the personal interview granted to him. The appellate order was never posted or communicated to him, he was never asked to appear and receive the same. On the advise of the learned counsel he filed C.P. 16/95 alleging that the appellate order was not received by him which came up for hearing on 10.2.1995, notices were issued for 24.5.1995, reply was filed and his acknowledgement and copy of the appellate order was attached to it, then he realised that he had been deceived, then the C.P. was dismissed on 24.4.1995. He received the appellate order along with reply in C.P. in May 1995. Advocate of the applicant was not available, the advocate could be contacted only in second week of May 1995. Thereafter, after 2-3 meetings a decision to file OA alongwith condonation of delay application was taken and OA with condonation of delay application was filed.

6. The respondents have filed a combined reply to MP 674/95 alongwith written statement denying the allegations levelled against them.

7. The applicant has filed rejoinder affidavit denying the allegation levelled against him and reiterate the facts stated in the OA. It is further alleged that the applicant was appointed in Railway on 3.8.1985 without a service card. At the time of medical examination, he was asked to submit three photographs which he submitted and which were later on mis-used.

8. The delay in filing the OA is of about 67/68 days, looking to the fact of filing of CP the purpose for which it was filed, the date of order of C.P. being 24.4.1995, non-availability of the advocate and thereafter prepared the OA alongwith delay condonation and filing the same, We are of the considered opinion that the delay deserves to be condoned and the matter deserves to be decided on merits rather than on delay in filing of the OA. In the result M.P. 674/95 allowed . Delay condoned.

9. On perusal of the disciplinary proceedings file, we are of the considered opinion that there is an acknowledgement of the applicant dated 1.10.1988 regarding the receipt of the charge sheet. In the said acknowledgement there is no mention of non-receipt of Finger Print Inspector's report. It leads us to conclude that it is an after thought fact which has no bearing.

Signature

10. On persual of the reply submitted by the applicant we are of the considered opinion that the defence raised during the course of this OA has no bearing for ready reference it is worth mentioning which is as under:

"I had worked for some days as Casual Labour with PWI/URI. But service card was not taken. When there is a opportunity me to engage as Khalasi in Electrical department, I went to PWI/URI for my service card. At first the office refused me to give service card which I demanded after 3/4 years. But after my humble request the concerning clerk has given me one card which produced to EF C SUR.

The card which I have produced to EF(C) SUR is the same which was received me by Uruli PWI I have not made any alteration or impersonated the card."

11. Article of charge is worth mentioning which is as under:

" That the said Shri Ankush Ramchandra, M.R.C.L. working under EF(C)/Solapur while functioning as Monthly Rated Casual Labour has impersonated the Railway Administration in that during inspection of Unit of EF(C)/Solapur in Dec.1987 labour service-card and non-identical L.H.T.I. has been detected. He is therefore, responsible in this case"

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12. The statement of imputation of mis-conduct in support of Article of charge is as under:

" Statement of imputation of mis-conduct or mis-behaviour in support of articles of charges framed against Shri Ankush Ramchandra, M.R.C.L. working under EF(C)/Solapur."

"That the said Shri Ankush Ramchandra, M.R.C.L. is working under EF(C)/Solapur. During the course of Finger-print inspection of the unit of EF(C)/Solapur in the month of Dec.1987, a major irregularity pertaining to impersonated casual-labour service card and non-identical LH.T.I. has been detected by F.P.I."

13. It is true to some extent that article of charge is not properly worded, but looking to the statement of imputation or mis-conduct in support of article of charges, the reply filed by the applicant, we are of the considered opinion that the facts are sufficient to indicate what is the charge against the applicant. In explanation dated 8.10.1988 he has not submitted that the charges are vague therefore he is not able to answer the same. He has properly understood the charge which is apparent on looking to the explanation submitted on 8.10.1988. Hence the applicant is not entitled to raise the said plea at this stage.

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14. The applicant has admitted the charge in unequivocal terms after properly understanding the same.

15. The learned counsel for the applicant relied on AIR 1965 SC 1578 S.D.G.Pandarasannidi V/s State of Madras and others for the proposition that if a plea is raised in rejoinder affidavit it is sufficient and it is to be looked and examined. We agree to the proposition of law and consider the case keeping in view the said proposition.

16. It is true that on 15.5.1989 the applicant was not served by the Enquiry Officer to proceed ex-parte, but the said fact is of no consequence for the reason that on 15.5.1989 Shri S.S. Pawar and Shri G.P. Rama have been examined in the presence of the Defence Assistant and also cross examined by the defence assistant. Thus it could be said that this is a false plea of the applicant that the Enquiry Officer proceeded ex-parte on 15.5.1989.

17. On 24.5.1989 applicant was examined and Defence Assistant also asked two questions to the applicant, by way of an explanation which is recorded as a cross examination. the two questions asked by the Defence Assistant, we are of the considered view that it is an explanation sought and not by way of cross examination. Hence the said fact in no way prejudice the defence of the applicant.

18. On 15.5.1989 the proceedings are signed by the Defence Assistant. It is not always necessary that proceedings should be signed by the applicant himself and the applicant who can raise the plea which is false one cannot be said to be a person of reliance and mere not signing of the proceedings by the applicant does not vitiate the proceedings.

19. We are not inclined to accept the plea of the applicant that what he is stated was not recorded, defence assistant was under the pressure of the respondents such a plea cannot be investigated at this stage. The scope of judicial review is limited one. Such a person who tells lie cannot be believed.

20. Earlier OA was decided only on question whether the personal hearing during appeal has to be afforded or not. Hence the other pleas are open to the applicant to raise in this OA. We are of the considered opinion that such a plea of the respondents is not sustainable.

21. If we peruse the statement recorded on 24.5.1989 of the applicant, we are of the considered opinion that the Casual Labour Card which belongs to someone else, was obtained by the applicant's father and was produced to secure the employment which was not possible in the absence of the Casual Labour Card. In such a circumstances it is a case where the applicant secure the employment by producing a Casual Labour Card which does not belong to him.

Devi

On 12.5.1988 the proceedings are argued by the Defence Assistant. It is not always necessary that proceedings should be signed by the applicant himself and the applicant who can raise the plea which is false one cannot be said to be a person of reference and were not signing of the proceedings by the applicant does not vitiate the proceedings.

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22. In the result we do not find any merit in the OA. The OA deserves to be dismissed on account of false plea raised by the applicant as well as on merits. Accordingly the OA is dismissed. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)

D.S. Baweja
(D.S.Baweja)
Member(A)

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