

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

Date of Decision : 7.3.2002

1. O.A. No. 995/1998.

V. Balasubramaniam, previously working as Assistant Pointsman in the Kurla Carshed, Central Railway and residing at 658/6/8, Janata Seva Sangh, Dambar Compound, Mukund Nagar, Dharavi, MUMBAI 400 017.

2. O.A NO. 996/98.

G. Kulashekara Pandian previously working as Assistant Pointsman in the Kurla Carshed, Central Railway and residing at Dombivili, District Thane, MAHARASHTRA.

3. O.A. NO. 997/98.

M. Venkatesan, previously working as Assistant Pointsman in the Kurla Carshed, Central Railway and residing at Room No. 12, New Municipal Chawl, Kalakilla, Dharavi, MUMBAI 400 017.

4. O.A No. 998/98.

Munshi Sha previously working as Assistant Pointsman in the Kurla Carshed, Central Railway and residing at Ambedkar Nagar, Sonapur, Mankhurd, MUMBAI 400 088

... APPLICANTS.

v e r s u s

1. Union of India, through the General manager, Central Railway, Chhatrapati Shivaji Terminus, MUMBAI 400 001

2. Senior Divisional Electrical Engineer (Traction), Kurla Carshed, Central Railway, Kurla, MUMBAI.

3. Divisional Electrical Engineer (Traction), Kurla Carshed, Central Railway, Kurla, MUMBAI.

4. Assistant Electrical Engineer (Traction), Kurla Carshed, Central Railway, Kurla, MUMBAI.

... RESPONDENTS.

Shri S. Ramamurthy, counsel for the applicants.
Shri S. C. Dhawan, counsel for the respondents.

CORAM

Hon'ble Mr. Justice Birendra Dikshit, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Gopal Singh)

The controversy involved in all the four applications is the same and the relief sought is also the same, therefore, all these four applications are being disposed of by this common order.

2. Applicants have prayed for quashing the charge sheet and the order imposing the penalty of removal from service of the applicants and for a direction to the respondents to reinstate the applicants in service as Assistant Pointsman (APM, for short), with all consequential benefits.

3. Applicants case is that in accordance with Divisional Railway Manager Letter dated 28.12.1986, 28.12.1986, 12.02.1987 and 12.02.1987, they were appointed as substitute APM in Kurla Carshed, vide letter dated 28.12.1986, 28.12.1986, 14.02.1987 and 14.02.1987, respectively. All the four applicants were served with a charge sheet in the year 1996 alleging that they have secured appointment in Railway on forged and bogus document by giving bribe. On conclusion of the enquiry, the penalty of removal from service was imposed upon the applicants vide respondents orders dated 03.11.1997. Appeal filed against the order of

Disciplinary Authority has not so far been disposed of, hence they have filed the respective OAs before this Tribunal.

4. The contention of the applicants is that the respondents have not proved that the documents produced by the applicants were fake or bogus and, therefore, the imposition of penalty of removal from service was illegal.

5. In the counter,, all the applications have been contested by the respondents. It is stated by the respondents that all the applicants have secured employment with the Railway in collusion with one Mr. Kumar by forging the documents. It is also the case of the respondents that the applicants in their own statement recorded by the Vigilance Inspectors, had admitted the fact that they never worked with the Railways prior to their appointment as substitute Pointsman in the year 1986 and 1987, they did not possess Casual Labour Card, they were never medically examined before appointment, etc. It is also pointed out that an enquiry was conducted through the vigilance and the charge that the applicants have secured employment by producing forged documents, stood proved

in the enquiry. Accordingly all the applicants were imposed the penalty of removal from service by the Disciplinary Authority vide its order dated 03.11.1997. It has, therefore, been prayed by the respondents that all the applications are devoid of any merit and are liable to be dismissed.

6. It is seen from the records that the applicants were questioned about their employment status in the year 1994 and their statements were recorded by the vigilance officials. Secondly it is alleged by the respondents that the applicants have got the employment with the Railways by giving bribe to one Mr. Kumar. Here it is pointed out that the veracity of the pre recorded statements of the applicants were not proved in the enquiry, inasmuch as the writer of the statements was not produced as a witness, so as to verify the correctness of the same. Secondly Mr. Kumar to whom the applicants were alleged to have given bribe was also not questioned as a witness. The findings of the Enquiry Officer were mainly based on the pre-recorded statements of the applicants. It is the case of the applicants that they have denied all the charges.

7. In this connection we can cite the judgments of Hon'ble the Supreme Court in Jagdish Prasad vs. State of Madhya Bharat AIR 1961, Supreme Court 1070, wherein it has been held that the statement of admission made by a government servant cannot be held as clear admission of guilt. It has further been held that removal from service on the basis of such statement without holding a fresh enquiry is bad in law inasmuch as requirement of Article 311(2) of the Constitution of India, are not satisfied.

8. It is thus clear that even if the applicants have made some statement which amounted to admission, ~~it was~~ *it was* open to doubt whether he could be removed from service on the strength of the said alleged admission without holding a formal enquiry as required by the rules. We consider it appropriate to extract below the relevant portion of the judgment Supra :-

" Even if the appellant had made some statements which amounted to admission, it was open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules.

(Para 11)

It is of the utmost important that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a chargesheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet.

(Para 13)

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services. AIR 1957 Madh. B. 15, Reserved."

(Para 13)

9. In the instant case, conduct of the applicants have been investigated on the basis of the statements made by them and a preliminary enquiry was

conducted. It is seen from the findings of the Enquiry Officer that the charges have been proved in the enquiry on the basis of the statements made by the Vigilance Inspectors who have stated in their statements before the Enquiry Officer that the applicants do not have any Casual Labour Card. They had never worked with the Railways prior to their appointment as substitute Poitsman in the year 1986 and 1987, they were not medically examined before their appointment etc. etc. They have relied upon the pre-recorded statements of the individual applicant for stating these facts. Thus though enquiry has been held in all the four cases, the pre-recorded statements of the applicants were not proved in the enquiry inasmuch as the writer of the statements was not questioned. In this connection, the case of Ministry of Finance and another vs. S.B. Ramesh-1998(2) SLJ 67, can be cited with advantage. In this case, one Shri S. B. Ramesh, Income Tax, Officer, Group-B, Andhra Pradesh (now under suspension) has contracted a second marriage with Smt. K. R. Aruna, while his first wife, Smt. Anusuya is alive and the first marriage has not been dissolved and a charge sheet was issued to him.

10. Respondents have challenged the order of the compulsory retirement, contending that the enquiry had not been held in conformity with the principle of natural justice, that the findings of the enquiry authority were perverse and based on no evidence and that Sub-Rule (18) of Rule (14) of the C.C.S. (C.C.A.), Rules, 1965, was not complied with. Learned counsel for the applicants argued before the Tribunal that all reasonable opportunities was given to the delinquent officer and all rules have been complied with and, therefore, the findings referred by the Enquiry Officer and accepted by the Disciplinary Authority were all based on evidence and, therefore, well founded. The Tribunal on consideration of the pleadings and documents placed before it found that the findings were rendered on surmises and presumptions and the documents marked as exhibits were not properly proved and the non examination of the complainants was also fatal to the case of prosecution. It has further been held by the Tribunal that it is true that the degree of proof required in a departmental disciplinary proceeding need not of be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case. However, the law is settled now that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding.

Viewed in this perspective we find there is a total dearth of evidence to bring home the charge that the applicant has been living in a manner unbecoming of a Government servant or that, he has exhibited adulterous conduct by living with Smt. K. R. Aruna and begetting children. In this case, Hon'le the Supreme Court had observed as under :-

" 14. On a careful perusal of the above findings of the Tribunal in the light of the material placed before it. We do not think that there is any case for interference particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it."

11. Thus, we notice that it is not only necessary that a enquiry has to be held in cases, where the delenquent officials has admitted his guilt, the enquiry should not become an empty formality. In the instant case, the findings of the Enquiry Officer are totally based on the particular recorded statements of the applicants and these statements have not been proved in the enquiry. Thus the enquiry gets vitiated and findings of the Enquiry Officer can be treated as based on surmises. It is also not disputed that the genuineness of the alleged forged documents or otherwise has not been verified with reference to the records maintained by the department. In these circumstances, we find that the action in imposing the penalty of removal from service upon the applicants cannot be sustained in law. Accordingly, we pass the order as under :-

" All the four O.As (O.A No. 995/98, 996/98, 997/98 and O.A. No. 998/98) are allowed. Impugned orders dated 03.11.1997 imposing the penalty of removal from service to each applicant

... 11.

is quashed and set aside, with all consequential benefits. All the four applicants would be reinstated in service within a period of three months from the date of receipt of a copy of this order. They would also be entitled to fifty per cent of the back wages for the period of their removal from service. No costs."

(GOPAL SINGH)

MEMBER (A)

(JUSTICE BIRENDRA DIKSHIT)

VICE CHAIRMAN

Joshi