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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAI PUR SINGH, JALPUR.

Date of Decision: 26-7-93

OA 321/39

BADOU BHAI

... APPLICANT.

Vs.

UNION OF INDIA & OR.

... RESPONDENTS.

C-GRAM:

HON. MR. GOPAL KRISHNA, MEMBER (J).
HON. MR. D.P. SHARMA, MEMBER (A).

For the Applicant

... SHRI J.K. KASHNIK.

For the Respondents

... SHRI S.P. DHARAWA.

JUDGEMENT

(DELIVERED BY HON. MR. D.P. SHARMA, ADMINISTRATIVE MEMBER)

The applicant has filed this OA being aggrieved by the order of removal from service dated 12.4.88 passed by CSTE (Construction) MW, Kota. He is also aggrieved by the order of dismissal of his appeal against the said order of removal from service, passed by Dy. CSTE (C) Tele, Western Railway, Churchgate, Bombay, (Annexure A-1 & A-2).

2. The applicant was appointed as a casual labour by the Chief Telecommunication Inspector (Construction) Micro Wave, Kota, on 2.11.83. Before that, during 1979, the applicant claimed to have worked as casual labour under IOW (Construction) Shri D.P. Nair, Western Railway, Nagda. Although his services earlier during 1979 were discontinued, Shri D.P. Nair, IOW (Const.) gave a Railway Service Card mentioning the particulars of applicant's service under him. It was on the basis of the said card that the applicant secured employment by order dated 2.11.83.

3. A memorandum of charges dated 11.3.37 was issued to the applicant (Annexure A-3). The charge against the applicant was that he had secured employment by order dated 2.11.33 by presenting a false service card, and had secured employment by defrauding the Railways. He denied the charge. Before the Enquiry Officer, the applicant made an admission of his guilt vide Annexure A-5 dated 12.3.37. According to the applicant, this admission of guilt was secured from him on a false representation by the Enquiry Officer that if he admitted the charge, his job could be saved. Thereafter, vide order dated 2.4.38, the applicant was removed from service (Annexure A-1). According to the applicant, he was not given any show cause notice against the proposed punishment and enquiry report was also not supplied to him before penalty was imposed. He has claimed that the card, which has been alleged to be false and fake, was issued to him by Shri O.P. Nair, the then IOW (Const.).

4. The learned counsel for the applicant stated during the arguments that no detailed enquiry was conducted into the charges against the applicant, as provided in the rules. He stated that the respondents are required to maintain a register showing the names of the casual labour employees and if this register had been maintained/produced, the applicant's name would find place therein. He has also stated that the applicant was not given documents mentioned in the charge-sheet. He has assailed the Appellate Order as not in conformity with the rules under which the Appellate Authority is required to give a finding whether the procedure of enquiry had been complied with, whether the findings of the Enquiry Officer were warranted by the evidence on record and whether the penalty was adequate or excessive in view of the gravity

(7)

of the misconduct. Further, according to him, in view of the decision of the Hon'ble Supreme Court in the case of ~~Man~~ *Ran* Chander Vs. UOI (AIR 1986 (2) SC 252), the Appellate Authority should have granted a hearing to the applicant before disposing of the appeal. He has also cited a judgment dated 6.11.87 of Full Bench of the Tribunal in the case of Premnath K Sharma Vs. UOI (Full Bench Judgements Volume-I Page 245) in support of the view that a copy of the enquiry report should have been given to the applicant before imposing the penalty. He has further invited our attention to the judgement of the Tribunal, Ahmedabad Bench, reported at (AIR 1991 (2) CAT 44), according to which, the failure of the enquiry officer to furnish the relevant documents to the applicant to enable him to prepare his defence amounts to violation of principles of natural justice and, therefore, such proceedings are liable to be quashed. He has, therefore, prayed that the order of the Disciplinary Authority and of the Appellate Authority should be set aside.

5. The learned counsel for the respondents has drawn our attention to the unequivocal admission on the part of the applicant before the Enquiry Officer (Annexure A-5), wherein he has admitted that his service card was fake. He has also drawn our attention to the fact that the said statement was made in the presence of two witnesses. He has also mentioned that there was no IDW or any other official by name Shri D.R. Nair at the relevant time who could have issued the service card to the applicant. With the reply of the respondents there is an Annexure R-3, which is an extract from the register of specimen thumb impression for temporary casual and substitute employees. This pertains to the period when the applicant was reported to have received service card from Shri D.R. Nair.

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In this, there is no reference to the applicant having worked as a casual labour. He has denied that the Enquiry Officer gave any assurance to the applicant that if he admitted his guilt, his job would be saved. According to him, admission of guilt by the applicant was of his own free will and in the presence of two witnesses. He has, therefore, prayed for the dismissal of the OA.

6. We have carefully considered the arguments of the counsel for the parties, have perused the records and have gone through the judgements cited by the learned counsel for the applicant. The admission of guilt by the applicant is in the presence of two witnesses, who were also Railway employees. No evidence has been produced to suggest that the applicant made admission of guilt on account of any inducement by the Enquiry Officer. Once a charged official admits his guilt before the Enquiry Officer, he is not required to hold a fullfledged enquiry. He could return a verdict of guilty on the basis of such admission and could submit his report to the Disciplinary Authority. The only document relevant in this case was the Service Card, which has been alleged by the authorities to be fake and false. Even if there is some infirmity in the procedure of enquiry, it does not go to root of the matter and does not vitiate the enquiry because basically the verdict of guilt against the applicant is based on his admission before the Enquiry Officer. This verdict is reinforced by the claim of the railway authorities that there was no employee by name Shri O.P. Nair who could have issued the certificate at the relevant time. The applicant has not brought any evidence on record to suggest that there was any person by name Shri O.P. Nair and he had issued the said Card. Therefore, findings of the Enquiry Officer are justified.

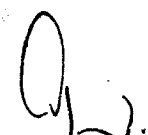
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7. We may now advert to the cases cited by the learned counsel for the applicant. It is true that the Full Bench of the Tribunal in Premnath K Sharma's case had held in November, 1937, that a copy of the enquiry report should be given to the applicant before a penalty is imposed on him. However, subsequently, there was a judgement of three members Bench of the Hon'ble Supreme Court in the case of UOI Vs. Mohd. Ramzan Khan (AIR 1991 SC 471). In this judgement also the Hon'ble Supreme Court held that copy of the inquiry report must be supplied to the charged official before imposing penalty on him. They further added that the application of the principle laid down in this judgement would have prospective application. Although the penalty on the applicant was imposed in April, 1938, while the Tribunal's judgement in Premnath K. Sharma was delivered on 6.11.87, we hold that the matter was clinched by the judgement of the Hon'ble Supreme Court in Mohd. Ramzan Khan's case ^{only} because earlier there was another judgement of the Hon'ble Supreme Court wherein they had held that a copy of the enquiry report need not be supplied to the charged official before imposing penalty on him. This judgement of the Hon'ble Supreme Court was delivered in the case of Kailash Chander Asthana Vs. State of Uttar Pradesh (1988 (3) SCC 600). We, therefore, hold that it was necessary to supply a copy of the enquiry report to the charged official only in cases where penalty had not been imposed by the time the Hon'ble Supreme Court delivered their judgement in Mohd. Ramzan Khan's case in November, 1990.

3. Regarding non-supply of documents mentioned in the charge-sheet, to the applicant, the Tribunal's judgement reported at (AIR 1991 (2) CAT 44) would not be of much help to the applicant because there was only one material document which has been produced by the applicant himself for securing

employment. As regards the judgement of the Hon'ble Supreme Court in the case of Ram Chander, requiring that opportunity of being heard should be given before disposing of an appeal, it may be stated that there are two significant aspects to be noted in connection with the applicant's case. One is that he made an unequivocal admission of guilt before his Inquiry Officer and also did not specifically ask for hearing by the Appellate Authority before disposal of his appeal. In these circumstances, we hold that there was nothing wrong if the Appellate Authority did not on its own grant an opportunity of being heard to the applicant. We have gone through the order of the Appellate Authority. We find that although the order does not contain separate findings on each of the three requirements mentioned in Rule 22 (2) or the RS (D&A) Rules, yet in substance the order of the Appellate Authority meets the requirement of Rule 22 (2).

9. In conclusion, we hold that the orders of the Disciplinary Authority and the Appellate Authority do not suffer from any basic infirmity and the findings of both the authorities are consistent with the evidence against the applicant and in view of the gravity of the misconduct the penalty imposed was justified. We, therefore, dismiss the OA. There shall be no order as to costs.


(O.P. SHARMA)
MEMBER (A)


(GOPAL KRISHNA)
MEMBER (J)