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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

O.A.No. 737 ~~& batch~~/1989 DATE OF DECISION:- 6-6-1990

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Between:-

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Petitioner(s)

Shri G.Ramachandra Rao. -Advocate for the petitioner(s)

Versus

Union of India & 2 others Respondent.

Shri N.R.Devaraj, SC for Rlys. Advocate for the Respondent(s)

CORAM:

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. J.NARASIMHA MURTHY, MEMBER(JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgment ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgment ? No
4. Whether it needs to be circulated to other Benches of the Tribunals ? No
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench) No

BNJ

(BNJ)

(JNM)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 737 of 1989 Date of Order: 6-6-1990

Between:

A.Munivelu .. Applicant

and

1. Union of India represented by the General Manager, South Central Railway, Secunderabad.

2. Deputy Chief Electrical Engineer (P&P), South Central Railway, Secunderabad.

3. Divisional Electrical Engineer (Construction), Carriage Repair Shop, South Central Railway, Tirupati-517506, Chittoor Dist.

.. Respondents

Appearance:

For the Applicant : Shri G.Ramachandra Rao, Advocate.

For the Respondent : Shri N.R.Devaraj, Standing Counsel for Railways.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI J.NARASIMHA MURTHY, MEMBER(J).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.)

1. The applicant herein is a Casual Labour Khalasi. He has filed this application challenging the orders passed by the 3rd respondent in Memo No.CRS/E.150/CN/4, dt.10-6-1989 removing the applicant from service and the orders passed by the 2nd respondent in Memo No.CRS/E.150/CN/4, dt.10-8-1989 confirming the same.

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2. The applicant states that he was initially engaged as Casual Labour Khalasi on 6-9-1982 under the Assistant Electrical Engineer, Carriage Repair Shop, South Central Railway, Tirupati. He was promoted to the semi-skilled category of Lineman in the month of August 1985 and subsequently promoted as Lineman in the skilled category on 19-1-1986 . He was engaged as Casual Labour Khalasi on 6-9-1982 by the Assistant Electrical Engineer, Carriage Repair Shop, South Central Railway, Tirupati, on the basis of the application given by him on 12-8-1982. In the said application for appointment it was stated that he had earlier worked as Casual Labour under the Permanent Way Inspector (Special Works), Arkonam, Southern Railway, from 24-4-1981 to 20-11-1981 . He was working continuously and without any break in service. He was given a temporary status on completion of one year of service and he was also given monthly scale of pay w.e.f. 1.1.1984.

3. By an order No.CRS/E.150/CON/4, dated 12.9.1987 the 3rd respondent kept the applicant under suspension pending enquiry w.e.f. 14.9.1987 and also issued a charge-sheet No.CRS/E.150/CON/4, dated 12.9.1987 under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. It was alleged that the applicant had secured employment as ELR Khalasi under the control of the Assistant Electrical Engineer, Carriage Repair Shop, South Central Railway, Tirupati, by fradulent means by producing bogus Casual Labour service particulars. In the statement of imputations of misconduct given as Annexure-II to the charge memo, it was stated that on verification it has come to light that the applicant had secured employment as ELR Khalasi in the Electrical Department by producing false information about his previous service purported to have rendered at Kalahasti vide CLS card KHT/

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2565 and that one Sri E.Logendra Singh, Permanent Way Inspector, Kalahasti, stated that the last number available in the LTI Register was 3/81 and that no Special Works units were functioning at Kalahasti since 1975. The applicant submitted his explanation to the same on 23-9-1987 denying the charge levelled against him. The applicant also requested the 3rd respondent to furnish him with the copies of the complaint or report and also copies of documents referred to in Annexures III and IV to the charge sheet, but they were not furnished to the applicant and his request was negatived by the 3rd respondent on 1-10-1987 . However, the applicant was permitted to peruse some of the said documents/records and he again submitted his explanation on 19-10-1987 denying the charge.

4. One T.Rama Krishna Rao was appointed as Enquiry Officer and he conducted the enquiry on 12-5-88, 14-6-88, 27-7-88 and 28-7-88. The Enquiry Officer recorded the statements of one K.V.Sastry, formerly Vigilance Inspector, South Central Railway, Secunderabad, who had investigated the case earlier and also that of Shri Logendra Singh, Permanent Way Inspector, Kalahasti, as witnesses on behalf of the Department. The applicant's statement was also recorded in defence and one document filed by the applicant was marked as Ex.D-1.

5. The order of suspension was ~~raised~~ revoked on 12-8-1988 and the applicant was allowed to perform his duties till the impugned order of removal was passed. The applicant contends that without considering the defence brief and evidence on record, the respondent No.3 passed the orders removing him from service. He was also furnished with a copy of the enquiry proceedings and the report of the Enquiry Officer. The Enquiry Officer held that except the charge that the Casual Labour card is

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a bogus one, other charges were not established in the enquiry. There was no direct evidence produced during the enquiry on the point whether the applicant was given employment only on the basis of and on the strength of the Casual Labour Card produced by him. The Enquiry Officer also held that there is no evidence on record whether documentary or oral that existence of a casual labour card with past service was a must for recruitment of Khalasis and the probability of the charged employee himself producing a card for securing the employment in the circumstances of the case does not gain credence. However, the 3rd respondent disagreed with the findings of the Enquiry Officer and held that the applicant is guilty of the charge levelled against him. No notice was issued to the applicant when respondent No.3 differed with the findings of the Enquiry Officer.

6. Aggrieved by the order of removal dated 10-6-1989 passed by the 3rd respondent, the applicant filed an appeal under Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 before the 2nd respondent. The 2nd respondent by his order dated 10-8-1989 communicated through proceedings No.CRS/E.150/CN/4, dated 18-8-1989 by the 3rd respondent, rejected the appeal filed by the applicant. Hence the applicant has filed this application.

7. In the counter filed on behalf of the respondents, it is stated that the relevant documents were furnished to the applicant and he was also permitted to peruse the documents sought for by him and was permitted to take extract of the documents for his defence. Therefore, the contention of the applicant that reasonable opportunity was not given is not correct. The applicant has admitted this in his answer to question No.2 of the DAR proceedings.

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8. As per the instructions in vogue the recruitment of casual labourer has to be resorted to only from among the casual labourers who were retrenched in other units and no fresh faces are to be engaged. It is very clear that submission of old casual labour card was a pre-requisite qualification for engagement as a casual labour as per rules. Though during the enquiry the Enquiry Officer held that it could not be established that bogus casual labour card was produced by applicant himself or not, the beneficiary on production of such bogus card being the applicant himself, the possibility of applicant's active participation in fabrication of bogus casual labour card cannot be ruled out. For these reasons the respondents resist the application.

9. We have heard Shri G.Ramachandra Rao, learned Counsel for the applicant and Shri N.R.Devaraj, learned Standing Counsel for the Railways.

10. Shri G.Ramachandra Rao States that the facts of this case are similar to those in O.A.736 of 1989, in which this Tribunal in its order dated 17-4-1990 set aside the order of the disciplinary authority. Shri Ramachandra Rao states that in O.A.736 of 1989 the applicant was a Casual Labour Khalasi and was recruited by the same Assistant Electrical Engineer, Carriage Repair Shop, South Central Railway, Tirupati, and in that case also a similar enquiry was held and the enquiry officer had submitted a similar report. The applicant in this case was recruited under similar circumstances and the charge memo issued to him is exactly the same. The reasons given by us in O.A.736 of 1989 for setting aside the order apply in this O.A. with equal force. On a perusal of the records, we find that our decision in O.A.736 of 1989 applies to this case.

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11. In the circumstances, we allow the application and set aside the order of the disciplinary authority dated 10th June 1989 bearing Memo No.CRS/E.150/CN/4, as confirmed by the appellate authority vide his order dated 10-8-1989 bearing No.CRS/E.150/CN/4, communicated on 18-8-1989. There will be no order as to costs.

(Dictated in Open Court)

(B.N.JAYASIMHA)
VICE-CHAIRMAN

(J.NARASIMHA MURTHY)
MEMBER(JUDICIAL)

Date: 6th June 1990

For Deputy Registrar(J) 26/6/90

nsr

To:

1. The General Manager, (Union of India) south central Railway, Sec'bad.
2. The Deputy Chief Electrical Engineer(P&P), south central Railway, Secunderabad.
3. The Divisional Electrical Engineer(construction), carriage Repair shop, south central railway, Tirupati-517 506,c chittoor dist.
4. One copy to Mr.G.Ramachandra Rao,Advocate, 3-4-498, Barkatpura, Hyderabad.
5. One copy to Mr.N.R.Devaraj, SC for Railways,CAT,Hyderabad.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.B.N.JAYASIMHA:V.C.

AND

THE HON'BLE MR.D.SURYA RAO:MEMBER(JUDL.)

AND

THE HON'BLE MR.J.NARASIMAHAMURTHY:M(J)

AND

THE HON'BLE MR.R:BALASUBRAMANIAN:M(A)

DATE : 6-6-90

ORDER / JUDGMENT

~~T.A./R.A./C.A./No.~~ in

~~T.A.No.~~ ~~W.P.No.~~

O.A.No.739/89

~~Admitted and Interim directions~~ Issued.

Allowed.

Dismissed ~~for default~~.

Dismissed ~~as withdrawn~~.

Dismissed.

Disposed ~~of with~~ direction.

~~M.A.~~ordered/Rejected.

No order as to costs.

26/6/90