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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 242/93
T.A. No.

199

DATE OF DECISION 9.5.93

Arfan Ahmed **Petitioner**

Mr.R.N. Mathur **Advocate for the Petitioner (s)**

Versus

Union of India & Ors. **Respondent**

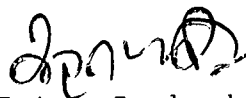
Mr. Manish Phandari **Advocate for the Respondent (s)**


CORAM :

The Hon'ble Mr. O.P.Sharma, Administrative Member

The Hon'ble Mr.- Ratan Prakash, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(Ratan Prakash)
Judicial Member


(O.P.Sharma)
Administrative Member.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.242/93

Date of order: 9.5.97

Arfan Ahmed

: Applicant

Vs.

1. Union of India through General Manager, Church Gate, Bombay.
2. Divisional Railway Manager, Kota.
3. Sr.Divisional Engineer(II), Kota.
4. Chief Engineer(E), Churchgate, Bombay.

...Respondents.

Mr.E.N.Mathur, Counsel for the applicant.

Mr.Manish Bhandari, Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Arfan Ahmed, has prayed that the charge sheet dated 26.5.1992 (Annx.A1) issued to the applicant may be quashed.

2. The facts of the case as stated by the applicant are that he at present holds the post of PWI in the Western Railway and is posted at the Kota Division thereof. A charge sheet dated 26.5.92 (Annx.A1) was issued to the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The allegations against the applicant was that while functioning as PWI Railway Electrification, Kota, he had engaged four casual labours unauthorisedly and without verifying the facts regarding their past service. The applicant submitted a representation dated 21.1.93 (Annx.A2) against the charge sheet. In this representation, the applicant demanded certain documents for the purpose of replying^{to} the charge sheet and also stated that it had been issued after an inordinate delay, in

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order to frustrate his chance of promotion. The applicant's name had been included in a panel dated 19.5.92 for promotion to the post of FWI Gr.I scale Rs.2000-3200, at Sl.No.35 thereof (Annx.A3). Persons junior to the applicant in the said panel have already been granted promotion. The applicant's promotion has been with-held on the ground that a departmental enquiry for imposing major penalty on the applicant is going on.

3. The applicant's further case is that the charge sheet has been issued after an inordinate delay for an alleged misconduct said to have been committed in 1983. The charges framed against the applicant are not such as required investigation for a period of 10 years. In its judgment in the case of State of M.P Vs. Bani Singh, AIR 1990 SC 1308, the Hon'ble Supreme Court has held that it is unreasonable to initiate disciplinary proceedings after a long delay and it is unfair to allow the departmental enquiry to proceed with after such long delay. This judgment was followed by the Tribunal in O.A No.73/92, K.C Sharma Vs. Union of India & Anr, decided on 27.8.92. In both these cases charge sheets were issued to the employees concerned after delay of about 10 years and these were quashed on the ground of delay. The respondents have no good reason for initiating disciplinary proceedings after such a long period. The allegation of unauthorized recruitment of casual labour is untenable because under the rules, the recruitment is to be made by the FWI who is incharge of the unit. The Executive Engineer (EE), Kota, had specifically empowered the applicant to recruit casual labour within his jurisdiction (Annx.A4). As regards the allegation relating to varification of the past record of the casual labour, if the labour cards submitted by the casual labours were not genuine, the applicant cannot be held responsible for the same because the applicant had no expertise to verify whether the signatures and the seal on the labour cards were correct. In any case, the misconduct of

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submitting bogus labour card had been committed by the casual labour concerned and not by the applicant. The respondents have not taken any action against the labours concerned who are still continuing in service. This fact is revealed from the seniority list of casual labour issued on 16.11.92 by respondent No.5 (Annx.A5) in which the names of these casual labours figure. Actually, proceedings should have been initiated against the casual labour who submitted fake labour cards. The charge sheet had been issued to the applicant with a view to denying him promotion which was due to him on the basis of his empanelment on 19.5.92 on the post of FWI Gr.I, Rs.2000-3300.

4. The respondents in their reply have stated that the applicant in his representation against the charge sheet had asked for a number of documents which were irrelevant for the purpose of his defence and the demand had been made with the object of creating hurdles in the enquiry proceedings. The Enquiry Officer was also appointed but the applicant had refused in the presence of two witnesses to accept the copy of the order of his appointment. According to them, it was for the Enquiry Officer to decide the relevance of the documents asked for and if he were to be satisfied about the relevance thereof he would order supply thereof to the applicant. The applicant has not been cooperating with the Enquiry Officer and the stage of supply of documents has not been reached. The allegation that the charge sheet has been issued after inordinate delay in order to frustrate the applicant's chance of promotion has been denied. The charge sheet was issued to him as soon as the misconduct was detected and it came to the knowledge of the respondents. Since a charge sheet has been issued to the applicant and disciplinary proceedings are underway, he cannot be considered for promotion till the proceedings are finalised.

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The fact that the applicant's name figured in the panel declared on 19.5.92 is immaterial. The judgment of the Hon'ble Supreme Court in Bani Singh's case is not applicable in the facts of the present case, because the misconduct of the applicant came to the knowledge of the respondents at a late stage and thereafter the charge sheet was issued to him. In Bani Singh case, the charge sheet was issued after a lapse of 12 years though the misconduct was within the knowledge of the respondents. It was the duty of the applicant as the Recruiting Officer to check up the genuineness of the service card of the labours. The matter has to be considered during enquiry. They have denied that no action has been taken against the labours who have been irregularly recruited. It has been stated in the reply that the respondents have taken action against the said labours also.

5. During the oral arguments, the learned counsel for the applicant stated that the charge sheet itself is vague. Although it is stated therein that by concealing the fact of the unauthorised engagement of certain persons as casual labour the applicant violated administrative instructions, no such instructions have actually been cited as part of the evidence on the basis of which the charges are to be established. It is, therefore, not clear what precise misconduct has been committed by the applicant. Moreover, the alleged misconduct is of 1963 and it was not the applicant who was in any way responsible for causing delay in issuing the charge sheet. Although the respondents have stated that the misconduct came to their notice late, they have not given details about when exactly the misconduct came to their notice and why it came to their notice so late. The applicant was not supplied with relevant documents for the purpose of submitting his reply to the charge sheet. Although the respondents had stated that they were taking

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action against the casual labours who had been irregularly employed, yet no further details have been given. He claimed that in view of the ratio of the judgment of the Hon'ble Supreme Court in Bani Singh's case and also on account of the charge sheet being vague against which the applicant was incapable of defending himself, the charge sheet deserves to be quashed.

6. The learned counsel for the respondents stated during the oral arguments that the applicant cannot be allowed to go into the merits of the charge sheet before the Tribunal, because the merits of the charge sheet can be gone into only by the Enquiry Officer. He added that there is no absolute bar to issue of a charge sheet even at a late stage. He cited the judgment of the Hon'ble Supreme Court in the case of State of Punjab & Ors Vs. Chaman Lal Goyal, 1995(1) SLR 700 to support the view that a charge sheet did not have necessarily to be quashed where it had been issued with considerable delay. In this judgment, the judgment of Bani Singh's case had also been considered. Further according to him, the enquiry in this case had already been completed and the Enquiry Report had also been submitted to the Disciplinary Authority. Therefore, according to him, it would be appropriate that the Disciplinary Authority now passes the final order in the disciplinary proceedings. As regards the casual labours employed, he stated that action had been initiated against them on the ground of their having produced fake service card but he was not able to furnish the exact details of the action taken against them and the result of such action.

7. By way of rejoinder to the oral arguments of the counsel for the respondents, the learned counsel for the applicant stated that the applicant had not at all entered into the arena of the merits of the charge sheet before the Tribunal. He had

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assailed the charge sheet on the ground that the charges are vague and therefore, the applicant was incapable of defending himself against such a charge sheet. The very purpose of issuing the charge sheet, which is to enable the employee concerned to defend himself against the action proposed against him, has therefore, been defeated. Once the charge sheet does not specify which instructions were violated by the applicant while recruiting the casual labour how is he to defend himself against the charge that he in fact made irregular recruitment of casual labours on the basis of their bogus service cards?

8. We have heard the learned counsel for the parties and have gone through the material on records including the judgments cited before us.

9. The Articles of charge against the applicant read as under:

Article.I

"That the said Shri Irfan Ahmed functioning as PWI/RE/ITT during the period 1983 committed gross misconduct by engaging three persons as casual labours unauthorisedly without verifying their service cards/past service. During investigation, their cards found (sic) bogus.

Article II.

"That during the aforesaid period and while functioning in the aforesaid office, the said Shri Irfan Ahmed, PWI/RE/ITT deliberately concealed the fact of unauthorised engagement of 3 casual labours and continued them in service without verifying their cards and past services. Shri Irfan Ahmed has thus failed to maintain absolute integrity and devotion to duty and has acted in a manner unbecoming of a Railway servant thereby violated Rule 3(i)(i)(ii) & (ii) of Ely servants Conduct Rules, 1966."

The Statement of imputations in support of the Articles

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of charge reads as under:

"Shri Irfan Ahmed while functioning as PWI/RE/Kota engaged the following four persons as C/labours in RE/Kota unauthorisedly without verifying their casual labour card and past services. Shri Irfan Ahmed further concealed this fact to the knowledge of his superior authority.

1. Shri Bhanwar Singh, S/o Shri Narain Singh
2. Shri Shrilal, S/o Shri Okaria
3. Shri Padhey Shyam, S/o Nathi Lal Sharma
4. Shri Tirawati, W/o Madhuban

Further by concealing the fact of his unauthorized engagement of persons as casual labour, violation of Administrative instruction (sic). He failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Raly. servant holding the responsible position of a senior subordinate."

10. The statement of article of charge refers to 3 casual labours, but the statement of imputation refers to four casual labour having been irregularly appointed. A careful perusal of the Articles of charge and the statement of imputations in support thereof however does not bring out that the charges are absolutely vague and without necessary details which would enable the applicant to defend himself against the charges framed. In Annx.A2 dated 20.1.93 which contains a request for supply of certain documents to enable the applicant to defend himself, the applicant has not made any statement that the charge sheet is vague and therefore, the applicant is incapable of defending himself against the said charge sheet. All that he has said in this letter is that he should be supplied with certain documents to enable him to defend himself properly during the enquiry. A perusal of the letter also shows that he has understood what are the charges against him. On the basis

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of the charge sheet issued to him and on the basis of his understanding thereof he asked for certain documents before the enquiry was started. In State Bank of Pikaner & Jaipur & Ors. Vs. Shri Prabhudayal Gover 1996(1) SLJ 145, the Hon'ble Supreme Court held that where the contents of charges communicated to the delinquent employee do not answer the description of a formal charge sheet but the contents thereof specifically disclose the charges against him, the provisions of the Rules regarding the requirements of the contents of the charge sheet could be said to have been complied with, substantially though not formally. In the case before the Hon'ble Supreme Court also they held that this conclusion was strengthened by the respondents' reply which clearly indicated that he had fully understood the charge against him. The same is the position with regard to the case before us.

11. As regards the applicant's grievance that although there is a reference to violation of certain administrative instructions in the charge sheet, no such instructions have been elaborated therein, it may be stated that 4 documents have been cited in the charge sheet on the basis of which the charges are proposed to be substantiated. We do not know whether any of the documents referred to therein refer to such administrative instructions. This is a matter which is within the domain of the Enquiry Officer. Incidentally the applicant himself referred to certain instructions having been issued by the Executive Engineer (EE), Kota, empowering the applicant to recruit casual labour and he intended to place these instructions as Annx.A4 but in fact there is no Annx.A4 to the O.A. After Annx.A3, the applicant has straightaway placed on record Annx.A5. During the arguments also the learned counsel for the applicant accepted that no such instructions have been placed on record by him. In any case during the course of

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enquiry, the applicant could demand copies of the instructions on the basis of which the charge would have been framed against him or he could claim that the charge is not established because no such instructions have been placed on record by the disciplinary authority. But we are of the view that the charge sheet cannot be assailed as ^{being} vague on the ground that no details of the contents of these administrative instructions in question have been given in the charge sheet.

12. As regards the documents asked for by the applicant vide Annx.A2, apparently these are additional documents not listed in the charge sheet. For the purpose of replying to the charge sheet, the applicant is entitled to copies of the documents listed in the charge sheet or inspection thereof as per sub-rule (7) of Rule 9 of the Railway servants (Discipline & Appeal) Rules. However, if he wants to inspect or rely upon any additional documents, he has to make a request in this behalf to the Enquiry Officer who shall examine the relevance of the additional documents which the employee wants to inspect and then permit inspection thereof if he considers these as relevant. This is as per the provisions of sub-rule (12) of Rule 9 of the aforesaid Rules. Therefore, the ground that he was not allowed access to or inspection of additional documents for the purpose of defending himself against the disciplinary proceedings is not tenable.

13. As regards the judgment in Bani Singh's case, we have carefully gone through it. We have also gone through the judgment of the Hon'ble Supreme Court in Chaman Lal Goyal's case. The proposition that emerges from Chaman Lal Goyal's case, in which Bani Singh's case was also considered by the Hon'ble Supreme Court, is that it is not in all cases of delay that the charge sheet has necessarily to be quashed. Various facts and circumstances including the gravity of the charges

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have to be considered. Employment of labour on the basis of bogus labour cards or irregular engagement of casual labour is a serious matter. Only on the basis of the enquiry would it be possible to say whether the charges against the applicant are established or not. At this stage it is not possible for us to make any comments on this aspect. But keeping in view the nature of the charges, coupled with the averments of the respondents that the charges came to the notice of the respondents late, we are not inclined to quash the charge sheet on the ground that it was issued after a period of about 10 years from the date of the alleged misconduct.

14. As regards the averments of the applicant that no action has been taken against the casual labour allegedly irregularly engaged but action has been taken against the applicant, we take note of the statement made by the learned counsel for the applicant during the oral arguments that appropriate action has been initiated against them also. However, non-initiation of action against the irregularly appointed casual labours would not justify non-initiation of action against the applicant who allegedly irregularly employed them. In *B.Rama Rao Vs. Govt. of A.P & Ors*, (1995) 29 ATC 106, the Hon'ble Supreme Court held that any wrong order or a negative benefit given to an employee or non-action by the employer to remedy the same illegality would not be a ground for extending the illegal benefit to the person similarly situated. In *V.P.Napur Vs. Union of India & Anr*, (1994) 27 ATC 383, the Full Bench of the Tribunal, Lucknow, while deciding a case relating to a plea for change of date of birth held as follows:

"The function of the Courts and the Tribunals being essentially to keep the authorities within the bounds of the law, we should lean in favour of issuing appropriate directions for removal of discrimination by ensuring

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removal of illegal action and not by directing the ~~perpetuation~~ perpetuation of illegality."

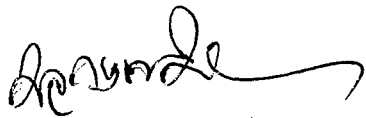
In our view the same principle would be applicable in the present case. Even if it is assumed that no action has been taken against the irregularly appointed casual labours, it is the duty of the respondents to take action against them with utmost despatch in accordance with law. But we are not inclined to quash the charge sheet against the applicant on the ground that while action is proposed to take against the applicant who allegedly irregularly appointed such casual labour no action is being taken against the casual labour so appointed irregularly, on the basis of fake service cards, etc. There is no doubt a dichotomy between the Articles of charge and the statement of imputations, as referred to in para 10 above, but the applicant could point this out to the Enquiry Officer for an appropriate response from him.

15. We have carefully considered all the other averments of the applicant also and we find no merits therein. Therefore, the prayer for quashing the charge sheet is rejected. Even the learned counsel for the applicant stated during the arguments, on an enquiry made by us, that the enquiry proceedings had already been completed. According to the learned counsel for the respondents, the enquiry report has also been submitted to the disciplinary authority. It may be appropriate in the circumstances of the present case that the disciplinary authority takes a view about the matter on the basis of the enquiry report submitted by the Enquiry Officer and passes the final order at the earliest. If the applicant is aggrieved by the final order passed, he is free to approach the Tribunal, after, of course, exhausting the statutory remedies available to him under the rules.

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16. The O.A is disposed of accordingly. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P. Sharma)

Administrative Member.