

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.1/96 Date of order: 27-3-02

Ansar Khan, S/o Sh. Idiya Khan, R/o Vill. Palsawata,
Post Malarna Dunger, Distt. Sawai Madhopur.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly,
Churchgate, Mumbai
2. Divisional Railway Manager, W.Rly, Kota Division,
Kota.
3. Asstt. Engineer(C), Western Rly, Alwar.
4. Dy. Chief Engineer(C) Western Rly, Bandiqui.
5. I.O.W (Field), Western Railway, Sawai Madhopur.

...Respondents.

Mr. P.V. Calla : Counsel for applicant

Mr. T.P. Sharma : Counsel for respondents.

CORAM:

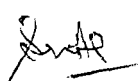
Hon'ble Mr. S.K. Agarwal, Judicial Member.

Hon'ble Mr. H.O. Gupta, Administrative Member.

PER HON'BLE MR S.K. AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer (i) to quash and set aside the enquiry report dated 18.1.90, (ii) to declare that the order of dismissal Annx.A1 dated 30.5.95 is illegal and to direct the respondents to reinstate the applicant in service forthwith as if no dismissal order was issued; (iii) to quash and set aside the order dated 12.9.95 (Annx.A1A) passed by the appellate authority; and (iv) all consequential benefits.

2. Facts of the case as stated by the applicant are that the applicant was engaged as casual labour alongwith



large number of labourers in Kota Division in the year 1983 on the basis of service card. Thereafter, a departmental enquiry was conducted against 9 casual workers including the applicant on the allegation that they produced false/bogus service card for procuring re-engagement in S&C Department in 1983 and on verification these cards were found bogus. The applicant was served with memorandum of charge-sheet. Enquiry was conducted by Sh.B.K.Nigam, who submitted the report of enquiry on 18.1.90 holding the applicant and 9 others as guilty. The disciplinary authority thereafter imposed punishment of dismissal from service of the applicant vide order dated 30.5.95. The applicant challenged the order before the appellate authority who dismissed the appeal vide order dated 12.9.95. It is stated that the enquiry was not conducted in a fair manner and copy of the documents were not supplied to the applicant. The applicant was held guilty on the basis of surmises and conjectures, therefore, the finding of the Enquiry Officer is perverse and the order of the disciplinary authority and the appellate authority on the basis of such findings is also not sustainable in law. Hence, this O.A.

3. Reply was filed. It is stated that the applicant produced false documents at the time of re-engagement knowingly and on enquiry the document was found false hence temporary status and regularisation was not granted. It is stated that during enquiry the applicant demanded certain documents which were not relied upon by the respondents but inspite of this, the respondents allowed inspection of these documents but the applicant did not like to avail that opportunity. Therefore, the demand of copies of documents by the applicant was completely unjust and

Sube

improper. It is also stated that full and fair opportunity to defend his case was provided to the applicant by the Enquiry Officer and there has not been any violation of the principles of natural justice while conducting the enquiry. It is stated that the applicant has rightly been punished on the basis of evidence produced on record. Therefore, the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has vehemently urged that the Enquiry officer held the applicant guilty on the basis of surmises and conjectures and there was no evidence on record to hold that the applicant procured re-engagement on the basis of bogus service card. Therefore, the findings of the Enquiry Officer is perverse and the punishment imposed upon such finding is also not sustainable in law. On the other hand, the learned counsel for the respondents supported the report of the Enquiry Officer as also the punishment imposed upon the applicant and decision of the appellate authority.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. During the course of enquiry, the Enquiry Officer did not examine any witness to support the charge. No body has stated that the card produced by the applicant was bogus. Even the maker of the document was not produced. No record of any kind was produced before the enquiry officer so as to say that the applicant never worked during the period and the card was bogus. It was the duty of the concerned department to establish the fact that the card

Sd/-

produced by the applicant was bogus, therefore, onus lies upon the department to establish the fact that the card produced by the applicant was bogus. The department failed to establish this fact by any reliable/acceptable evidence that the card produced by the applicant was bogus.

8. Not only this, but on a perusal of order in O.A No.257/95 decided on 27.6.95, it appears that the punishment imposed against certain other persons regarding the same alleged misconduct, who were impleaded in this enquiry, have been cancelled by the respondents' department and they have been allowed to join the duties and the period after dismissal till their joining has been treated as pent on duty for all purposes. But no explanation to this effect has been given why the appellate authority has not considered the appeal filed by the applicant on the similar facts and circumstances.

9. The counsel for the respondents urged that this Tribunal can only interfere in the departmental proceedings where the Tribunal is of the opinion that the findings of the Enquiry Officer are based upon no evidence or the punishment imposed is totally disproportionate to the proved misconduct or there has been denial of reasonable opportunity or violation of the principles of natural justice; but in this case the enquiry officer has rightly held the applicant guilty and the disciplinary authority has rightly imposed the punishment of dismissal of the applicant from service, therefore, the Tribunal has no jurisdiction to interfere. The learned counsel for the applicant from the very beginning argued that the findings of the Enquiry officer are perverse as these findings are based on no evidence.

Smt. A

10. The Court/Tribunal can only interfere in the departmental proceedings where the High Court/Tribunal is of the opinion that there has been denial of reasonable opportunity and/or there has been violation of principles of natural justice and the findings are based on no evidence or the punishment is totally disproportionate to the proved misconduct of an employee.

11. In B.C.Caturvedi Vs. UOI, (1995) 6 SCC 750, it was held that the Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or whether conclusion or findings reached by the departmental enquiry is based on no evidence.

12. In Food Corporation of India Vs. Padma Kumar Dhuvan, 1999 SCC(L&S) 620, it was held by Hon'ble Supreme Court that the applicant has to establish that what prejudice has been caused him on account of nonsupply of documents.

13. In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999(1) SLR 283, Hon'ble Supreme Court held that normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilt is based on no evidence it would be perverse finding and would be amenable to judicial scrutiny.

14. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 227, it was held that once the finding of fact based on appreciation of evidence are recorded - High Court in writ jurisdiction may not normally interfere with those findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and or legally untenable.

Amir

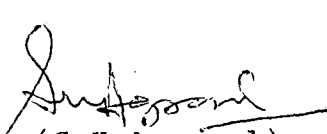
15. In the instant case, no witness has been examined during the course of enquiry to support the charge, no body has stated that the card produced by the applicant is bogus, even the maker of the card has not been produced, no record of any kind was produced before the enquiry officer so as to say that the applicant never worked during the period and the card is bogus. Therefore, the findings of the Enquiry Officer are based on surmises and conjectures and in these circumstances, no other conclusion can be drawn except that the findings of the enquiry officer are without any supporting evidence, hence perverse and the punishment imposed on such findings is also not sustainable in law, therefore, liable to be quashed. In the same way, the order passed by the appellate authority is not sustainable in law and liable to be quashed. It is also worth mentioning here that the proceedings initiated against other persons, who were also impleaded in the same enquiry proceedings, have already been cancelled.

16. In view of above all, we allow this O.A and quash and set aside the impugned order dated 30.5.95 (Annx.A1) passed by the disciplinary authority and the order dated 12.9.95 (Annx.A1A) passed by the appellate authority and direct the respondents to reinstate the applicant in service forthwith. The applicant shall not be entitled to any back wages but the period after dismissal till joining duty, shall be treated as spent on duty for all purposes.

17. No order as to costs.


(H.O.Gupta)

Member (A).


(S.K.Agarwal)

Member (J).