IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.292/1995 Date of order: 12/5/2000

Akhtar, S/o Shri Mahboob, R/o Vill.Pacchipula, Post Atunkalan, Distt.Sawaimadhopur, last employed as Gangman (TS) in the office of Asstt.Engineer, W.Rly.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly, Churchgate, Mumbai.
2. Sr.Divisional Engineer(III), W.Rly, Kota Divn, Kota.
3. Asstt.Engineer, W.Rly, Sawaimadhopur (Raj).

...Respondents.

Mr.J.K.Kaushik) - Counsel for applicant.

Mr.Shiv Kumar )

Mr.Manish Bhandari) - Counsel for respondents.

Mr.Anupam Agarwal )

CORAM:

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

Hon'ble Mr.N.P.Nawani, Administrative Member.

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

In this Original application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the charge sheet dated 5.3.88 and the NIP dated 28.8.90 inflicting the penalty of removal from services of the applicant and direct the respondents to allow all consequential benefits.

2. In brief facts of the case as stated by the applicant are that he was initially engaged as casual Gangman on 23.7.84 and was granted temporary status w.e.f. 8.2.85. It is stated that the applicant was served with a charge sheet alleging that he obtained employment by fabricating bogus service card and played fraud with the department. It is stated that enquiry was not conducted as per rules, no witness was examined and the applicant was not supplied with the copy of the enquiry report but on the basis of the enquiry report, respondent No.3, without application of mind, imposed the penalty of removal from service vide the impugned order dated 28.8.90. The applicant filed O.A No.1184/92 but the same was disposed of with the direction to decide the appeal filed by the applicant on merits. Thereafter, the applicant filed an appeal which is pending. It is stated that the charge sheet is vague and the Enquiry Officer did not conduct the enquiry in accordance with the rules and procedure. It is further stated that there was no requirement of any service card for the employment, therefore, the impugned order of removal was passed without application of mind

and the appellate authority also rejected the appeal arbitrarily and against the rules. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that in the year 1984, applicant alongwith others was re-engaged on the basis of the fact that the applicant worked earlier in the Railways and for proof, the applicant was required to furnish his earlier job card for re-engagement which was a precondition and the applicant had furnished the job card which on enquiry was found bogus. It is stated that the applicant was issued memorandum of charge sheet and after enquiry, the charges against the applicant were proved as he had secured the employment on the basis of bogus service card. Therefore, the applicant was removed from service vide impugned order dated 28.8.90. It is further stated that it was noticed by the respondents that some of the employees secured re-engagement as casual labourers on the basis of bogus service card, therefore the service cards were verified and charge sheet was issued to those whose service card found bogus.

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

5. On the perusal of charge sheet it is abundantly clear that the charges levelled against the applicant are absolutely unambigous. The applicant took the benefit of past service at the time of his re-engagement in the year 1984. It is also evident that it was a precondition for re-engagement that the applicant should have worked earlier in Railways as Casual Labour and admittedly, the applicant had furnished a service card which on verification was found bogus. On the perusal of the averments of the parties, it is also evident that the charge against the applicant was also proved, therefore, the competent authority after application of mind, imposed the penalty of removal from service vide the impugned order dated 28.8.90.

6. The learned counsel for the applicant has argued that the charge against the applicant is not at all proved, therefore, the impugned order of removal passed on such enquiry report is not sustainable in law.

7. The power of judicial review of the Tribunal/High Courts are limited in the matters of departmental enquiries. In catena of judgments decided by Hon'ble the Supreme Court it was held that High Courts/Tribunal while exercising the power of judicial review cannot substitute its own conclusion on penalty and impose some other penalty.

8. In Kuldeep Singh Vs. Commissioner of Police & Ors.1999(1)

SLR 283, it was held by Hon'ble Supreme Court 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 fact is based on no evidence it would be purverse finding and would be amenable to judicial scrutiny.

9. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999 (2) ATJ SC 227, it was held by Hon'ble the Supreme Court that 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 purverse and or legally untenable.

10. In the instant case, we are unable to hold that it is a case of no evidence, therefore, the findings arrived by the Enquiry Officer cannot be said to be purverse and are not liable to be set aside by this Tribunal while exercising judicial review.

11. The applicant was removed from the service after holding an enquiry, therefore, it cannot be said that the principles of natural justice are violated in the instant case.

12. In UOI & Ors Vs. Jaikumar Parda, 1996(32) ATC 247, it was held by Hon'ble Supreme Court that if any material adverse to the respondents formed a foundation for termination, the principles of natural justice may necessarily require that prior opportunity of hearing must be provided.

13. In the instant case, the applicant was removed from service after holding an enquiry and in the enquiry, there appears to be no violation of any rule or principles of natural justice.

14. In G.Sumathi Vs. UOI & Ors, 1996(34) ATC 459 Madras, in which the services of the applicant were terminated because of misconduct of producing 'bogus certificate'. If no detailed enquiry is conducted, the termination was held as penalty for an unapproved act of misconduct of producing a bogus certificate.

15. In the instant case, the departmental authorities had conducted an enquiry after serving charge sheet to the applicant and after furnishing report of Enquiry Officer and completing other formalities, the impugned order of removal from service was passed, which cannot be said to be arbitrary or illegal or in violation of principles of natural justice in any way.

16. It is settled law that casual labour has no right to a particular post. He is neither a temporary government servant nor a permanent government servant. Protection available under Article 311 of the Constitution of India does not apply to the casual labour. His tenure is precarious and his continuance is depend on the satisfaction of the employer. A temporary status conferred upon

him by the scheme only confers him those rights which are spelt out in the rules.

17. In the instant case, the applicant was only a temporary status holder casual labour who was removed from service after conducting a detailed enquiry, therefore, we do not find any infirmity in the impugned order of removal from service and the order passed by the appellate authority rejecting the appeal of the applicant against the impugned order of removal.

18. We, therefore, dismiss the O.A having no merit with no order as to costs.

(N.P.Nawani)
Member(A).

(S.K.Agarwal)
Member(J).