

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 864 of 1998

Jabalpur, this the 30th day of September, 2003.

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member
Hon'ble Mr. G. Shanthappa, Judicial Member

Mahesh Kumar S/o Shri Ramcharan Saini,
aged about 40 years Ex-MRCL,
Central Railway, resident of
Shanker Ki tapariya East Ganesh
Ward Bina, Distt-Saugor (M.P.)

APPLICANT

(By Advocate - Shri L. S. Rajput)

VERSUS

Union of India, Through,

1. The General Manager,
Central Railway, Mumbai CST.
(MAHARASHTRA).
2. The Disivisional Railway Manager,
Central Railway, Habibganj,
BHOPAL (M.P.)
3. The Senior Divisional Electrical
Engineer (G) Central Railway,
DRM's Office, Habibganj,
BHOPAL (M.P.)

RESPONDENTS

(By Advocate - Shri S.K. Mukerjee)

O R D E R

By Anand Kumar Bhatt, Administrative Member -

This original Application is against the order of removal dated 27/29.10.1993 (Annexure A-1), removing the applicant from the job of MRCL; subsequent appellate order dated 03.09.1997 (Annexure A-2), in compliance of the order of the Tribunal dated 04.07.1997 in CA No. 82/1995 and the order of the revisional authority dated 01.09.1998 (Annexure A-3), rejecting the revision petition.

2. The facts in brief as per the applicant are that the applicant had come before the Tribunal in CA No. 82/1995 (Mahesh Kumar Vs U.O.I.), in which it was stated by the applicant that in other cases of similar nature, other persons have been exonerated of the charge and continued to be in

service. The Tribunal remitted the case back to the appellate authority to consider the question of quantum of punishment in the light of minor penalty imposed against some others. The appellate authority vide order dated 03.09.1997 (Annexure A-2) rejected the ~~application~~^{Appeal}. The revision petition was also rejected. The applicant stated that he was engaged on 22.10.1979 as Daily Rated Casual Labour in broken periods in various depots at different places wherever the work was available. After that the applicant was engaged under Electrical Foreman (M), Bina on 01.10.1981, where he continued. After verification of his casual service, he was issued a Casual Labour Service Card and was brought on monthly rate of pay after continuously working over 6 months with effect from 13.04.1983 and after medical examination on 08.04.1983. The Daily Rated Casual Labours are given status of MRCL only after verification of their casual labour service and after passing the requisite medical test as per the extant rules. The applicant was being considered in Jhansi Division for absorption against a regular Group-D post. In the meantime a new Bhopal Division came into existence with Bina in its jurisdiction. Since the applicant was working at Bina, he was not given regular appointment by Jhansi Division. He continued as MRCL at Bina. On 05.07.1990 a major penalty was issued charge sheet against the applicant. The charge was that the applicant had obtained casual employment on the basis of fake casual service card. Preliminary enquiry was conducted. However, this enquiry was not done according to the procedure laid down under Rule 9 of the Railway Servants (D&A) Rules, 1968. The applicant nominated Shri A.R. Wadwe retired Office Supdtt. Jhansi as his defence counsel (ARE). The enquiry officer did not give proper notice notice in advance, nor journey passes were issued to ^{Shri ARE is} attend the enquiry. The Enquiry Officer (for short EO) examined two witnesses in the absence of the applicant and Shri Jagdish Prasad was his defence counsel and another witness also examined in the absence of his ARE. The applicant was not permitted to adduce

his defence properly. On receipt of the copy of the enquiry report on 13.09.1993 the applicant submitted his reply to the show cause notice issued by the disciplinary authority giving details of the irregularities committed in conducting the enquiry. The disciplinary authority passed the order dated 27/29.10.1993. The applicant had stated in the appeal that The General Manager (RE), Allahabad, in similar cases has accorded post-facto sanction to the engagement of 90 casual labours by treating them as fresh recruits for the purpose of seniority. He has also cited two cases in the same Division of Shri Brijlal and Shri Sita Ram, where the charge sheets were dropped. When the case came to the Tribunal, ~~we are~~ referring to the two cases of Brijlal and Sita Ram, the case was remitted back to the appellate authority to consider the question of quantum of punishment in the light of punishment given in the earlier similar cases. Thereafter the appellate order dated 03.09.1997 was passed by the appellate authority.

3. The learned counsel for the respondents made a preliminary objection that the matter has already been decided in OA No. 82/1995 and therefore in the present original Application the Tribunal has no jurisdiction. For the present the Tribunal has ^{verdict of the} to follow the earlier order in OA No. 82/1995. He cited the case of Smt. Ramabai and others vs. Harbilas and others reported in AIR 1997 Madhya Pradesh 90 (Gwalior Bench), wherein it has been held that where the court is trying a suit, that being remanded by a superior court, cannot act contrary to the directions of the superior court.

4. The learned counsel for the applicant quoted the Full Bench judgment of the Central Administrative Tribunal in the case of Shri K.L. Gulati vs. Union of India and others reported in Full Bench Judgments of CAT 1991-1994 (Volume III) Page 367, where it has been held that if in earlier proceedings the points

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raised involved certain issues for decision if not covered and decided and in the adjudication arrived at finally in the earlier case, the petitioner was given liberty ^{to} assail any final order which may be passed by the competent administrative authority on reconsideration of the impugned order which was assailed in the earlier proceedings; in that case, the correctness or otherwise of the earlier order could be considered after the final order has been passed by the competent administrative authority on a representation against **the** impugned order assailed earlier. He stated that in view of the Full Bench judgment **the** preliminary objection is not valid. He further argued that enquiry was not properly held, timely notice was not given of the enquiry and therefore the defence counsel could not be present. The reply to the show cause notice issued by the disciplinary authority (for short DA) was not considered and the person who issued the alleged bogus card was not examined and as other similarly placed persons have got away with minor penalty there is hostile discrimination against the applicant. He stated that the applicant has put in 14-15 years as casual worker and the MRCL category was given after due verification of the record. Apart from the 2 cases mentioned earlier there are other cases in which minor penalties were given.

5. The respondents on the other hand have stated that after the case was remitted by the Tribunal, the appellate authority after waiting for more than a month for any representation from the applicant, asked the applicant vide letter dated 13.08.1997 to make a representation. The representation was made by the applicant on 18.08.1997 which was duly considered by the appellate authority and the earlier decision of removal from service was upheld. The appellate authority also considered the matter in context with Annexure A-21 and Annexure A-21(a) in OA No. 82/1995, citing the cases of Shri Sitaram and Shri Brij-
^{+ discussed}
lal, and ~~stating~~ as to how those cases had no relevance with the

present case of the applicant. The respondents have further stated that the Railway Electrification project is a totally different administrative unit and the decision taken by the authority there cannot be binding on the open line staff. The applicant had managed to secure employment in the Railways by giving a fake casual labour service card. It was confirmed by the authorities who issued the casual labour service card No. 260253, in favour of the applicant that this card was not issued by them and the signature of Mr. P.R. Chhatawani on the said card seems to be forged. The respondents have stressed that the applicant failed to establish the genuineness of the above casual labour service card during the course of enquiry or otherwise too. His submission that he was originally engaged on 22.10.1979 under CIOW/C. Rly. Bhopal is false, though he was re-engaged in Bina as a casual labour on 01.10.1981. The enquiry officer had convened the enquiry on 22 different dates and during the entire process of the enquiry the applicant as well as his ARE adopted non-cooperative attitude and therefore some witnesses were examined in the absence of the applicant as ex parte. The applicant has all the time before the Tribunal raised technical points and did not make any efforts to establish the genuineness of his casual labour service card.

6. Explaining the case of Brijlal and Sita Ram, the respondents have explained that Brijlal's casual labour service card on the basis of which he secured the initial appointment on ~~considered~~ Railway was ~~found~~ to be fake on verification and disciplinary proceedings were started against him and was removed from service vide order dated 29.12.1994. However, even before the order, post facto sanction in his favour was granted by the G.M., Central Railway vide his letter dated 01.04.1993. As this fact was not produced by Shri Brijlal before the disciplinary authority he was taken back in service. In the

case of Shri Sita Ram his employment was with Railway Electrification project, so any action taken in regard to him will not be applicable to the open line staff.

7. In his oral submission Shri Mukherjee cited AIR1986SC686, where it has been held by the Apex Court that the number of years put in by an employee shall not be considered when the employment was obtained on the basis of fake certificate. Similar decision has been given by the Jabalpur Bench of this Tribunal in the case of Madhukar Vs. U.O.I. & ors. in OA No. 504/1997 decided on 26th March, 2003. He stated that looking to the seriousness of the charge it is not a case where the punishment granted should be interfered. This being not a ~~case~~ case where it shocks the ~~conscience~~ conscience of the Tribunal.

8. In reply Shri Rajput for the applicant stated that in addition to Sita Ram and Brijlal, he has given the name of a few more persons of Central Railway whose cases were of also similar nature and who were given minor penalties. Confirming the same punishment by the disciplinary authority is against the remittal order.

9. We have carefully gone through the pleadings on both the sides and have heard the counsel on both the sides at some length.

10. As far as the question of restricting the present OA within the four corners of the earlier decision given in the earlier order of the Tribunal, we agree with the applicant that if the points involved were not decided in the first case it is open for him to challenge the correctness of the order under dispute. The case of Shri K.L. Gulati (supra) cited by the applicant is binding on us. However it can be mentioned at the outset that, not ~~several~~ ^{at every} time~~s~~ some new issues can be ^{before the Tribunal} raised so that the case is remitted. In OA No. 32/1995, two

cases of Shri Brijlal and Shri Sita Ram were pointed out by the applicant and after seeing the Annexures A-21 and A-21(a) in the said OA, the Tribunal remanded the case to the appellate authority to reconsider the quantum of punishment. The two cases have been examined by the respondents and in the appeal order the reasons have been given why the two cases are not applicable in the case of the applicant and in the reply submitted by the respondents it has been ~~given~~ ^{not mentioned} in detail as to why the two cases are not applicable in the present case. We also agree with the respondents that what has been done in the case of Railway Electrification Project is not binding on the open line staff and the reasons for taking back in service of Shri Brijlal have also been studied. Both these cases can therefore be distinguished from the present case and we do not find the respondents at fault on this. Now again the applicant cannot mention a few more names with the objective of quashing of the enquiry and fresh exploration of the cases of various other employees which he has now mentioned.

11. It is an established principle that the departmental enquiry cannot be strictly according to the Indian Evidence Act and in case there is non-cooperation or willful absence of the applicant, ex parte proceedings are allowed.

12. What ~~strikes~~ us is that all through the applicant has been raising technical points but he has evaded the main issue of that is the genuineness of the casual labour service card issued to him. Rather by citing other instances where such misconduct was ignored in other zones or in a project like Railway Electrification, he seems to be admitting his guilt in this regard. As has been pointed out in several cases it is beyond the scope of the Tribunal to look into the quantum of punishment once the charges are proved until it shocks the

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conscious of the Tribunal.

13. We do not find any reason to interfere with the action taken by the respondents against the applicant. Accordingly the Original Application is dismissed. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

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L.S. Rajput Adc
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