

Subhash Ramkishan Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Ahmedabad

Decided On : Mar-04-2002

Reported in : (2004)(1)SLJ164CAT

Judge : A Sanghvi, S A G.C.

Appellant : Subhash Ramkishan

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The applicant who was working as Khalasi under the respondent No. 2 at Dahod workshop is aggrieved on account of penalty of removal from service imposed on him by the Disciplinary Authority (DA) vide order dated 2.6.92 (Annexure A-5) upheld by the Appellate Authority (AA) vide order dated 25.1.93 (Annexure A-6) and has prayed that the same be quashed.

2. According to the applicant while he was working as Khalasi at Dahod workshop under Chief Workshop Manager, CWM he was served with a charge-sheet dated 22.2.88 (Annexure-A) alleging that at the time of his initial appointment as a casual labour in Railway Workshop Dahod, he produced service card indicating his previous working under I.O.W Bharuch from 25.6.82 to 26.7.82, 1.8.82 to 7.8.82 and 9.8.82 to 10.9.82 and the said service card is found bogus during the preventive check of CVI RTM in October 1987 and thus he had managed to get the appointment of casual labour on the strength of the said bogus card thereby cheating the Railway Administration by producing false documents and violating

Rule 3(1) (I) and II) of Railway Service (Conduct) Rules, 1966. He submitted his reply (Annexure A-1) but without considering the above reply respondent No. 2 decided to conduct the departmental inquiry against him. The Inquiry Officer (I.O.) submitted his report vide letter dated 3.5.89 (Annexure A-3). A copy of the same was applied to him. He submitted his representation vide his letter dated 22.2.88 (Annexure A-4). The DA thereafter issued an order dated 2.6.92 (Annexure A-5) awarding the penalty of removal from service. He filed an appeal dated 7.7.92 against the said order and the same was rejected vide letter dated 25.1.1993 (Annexure A-6). He filed his second appeal vide his letter dated 12.6.94 (Annexure A-7) to the General Manager, Churchgate Bombay which has still not been decided. Aggrieved by the impugned order of removal from service passed by the DA and upheld by the AA he has approached this Tribunal.

3. The respondents have contested the O.A. and have filed detailed reply.

4. We have heard Mr. P.H. Pathak and Mr. M.S. Rao, the learned Counsel for the applicant and the respondents respectively. We have also gone through the written arguments filed by Mr. Pathak and examined the departmental file made available by Mr. Rao at our instance.

5. Mr. P.H. Pathak for the applicant has inter alia contended that while the Appointing Authority of the applicant is the Works Manager the charge-sheet is issued Assistant Works Manager (AWM). According to him the original service card produced before the respondents by the applicant was neither produced before the Inquiry nor was the same supplied/shown to him. He has contended that the inquiry has been conducted in gross-violation of Railway Servants (D and A) Rules, 1968 inasmuch as the I.O. first examined the applicant as if he has committed the misconduct and has to establish the same and that he acted as a Prosecutor and Judge, According to him thus there is a prejudice on the part of the I.O. He has contended that no witness who is not mentioned in the charge sheet can be examined and that too after the defence has been submitted by the applicant and hence evidence of I.O.W., Bharuch is required to be ignored. He has also contended that without application of mind the DA has imposed the penalty and hence the impugned order is arbitrary and illegal. Similarly he has also

contended that the order passed by the AA is also arbitrary without application of mind as the same is passed without considering the contentions raised by him in his appeal. He has argued that there is no evidence for the I.O./DA to come to a conclusion that the charge is proved to the effect that he has produced fake card.

6. On the other hand Mr. Rao for the respondents has inter alia contended that the AWM Dahod is the DA hence, he had issued the charge-sheet SF-5 dated 22.2.88, the original service card along with other relevant documents were produced in the inquiry dated 12.5.88 and copies supplied. According to him there is no prejudice on the part of the I.O. and the inquiry has been conducted in accordance with the rules and after following the principles of natural justice. The I.O. is supposed to ask certain questions from the applicant in order to arrive at the true facts so that an appropriate decision is taken. He has contended that the DA has passed the order after carefully going through the charges, the inquiry proceedings, relevant documents/final defence submitted by the applicant and hence, the same cannot be considered to be arbitrary or without application of mind. He has also contended that the appeal of the applicant has been duly considered and rejected by the AA after proper application of mind. He has further stated that the I.O. W. Bhavnagar Para stated during the inquiry that the Railway service card has not been issued by Bharuch and therefore, based on this the I.O. has given his findings. Accordingly, the finding is based on evidence.

7. Before we go into the rival contentions, we would like to deal with the preliminary objection raised by the respondents that the O.A. is barred by limitation. According to them the appeal of the applicant dated 7.7.92 was decided by the CWE, CCG of 25.1.93 and it is not known to respondent No. 2 whether the alleged review application dated 12.6.94 (Annexure A-7) has been submitted to GM(E), CCG or not. The review application is required to be sent through proper channel and an advance copy sent to the reviewing authority but no such copy has been received by the respondent No. 2 which shows that no such review application has been filed by him and he has attached a fabricated copy of such an application. According to them this is with a view to overcome the period of limitation during which the O.A. was required to have been filed. Going by the decision of the AA dated 25.1.93 the O.A. which has been filed in September, 1998

is hopelessly barred by limitation. It has been contended by them that even assuming that the review application dated 12.6.94 has been filed by him and the same has remained undecided he should not have waited for more than 6 months and should have filed the O.A. within the period of limitation. They have accordingly, prayed that the O.A. deserves to be rejected on this ground alone. In his M.A. 670/98 for condonation of delay the applicant has mainly contended that after his removal from service he was facing great difficulty in maintaining himself and therefore, he could not approach the Tribunal. According to him the other similarly situated employees had approached this Tribunal and he was waiting for their decision as all were similarly situated and had been issued identical charge-sheet. Those employees have been reinstated in service but the case of the applicant has been decided otherwise by the respondents and hence, the applicant has approached the Union representative for financial help to him. Accordingly with the help of the Union representative and his well wishers the applicant is able to approach this Tribunal. According to him the circumstances leading to the delay in filing the application are beyond his control and he will accept whatever conditions will be suggested or ordered by the Tribunal for the back-wages for the period from removal from service till filing of the present application.

8. We have examined the rival claims in this regard. Keeping in view some of the contentions raised by him in regard to the manner in which the inquiry has been conducted we are of the considered view that in the interest of justice, delay involved in filing of the O.A. deserves to be condoned. Accordingly, we allow the M.A. 670/98 and condone the delay.

9. Taking up the rival contentions, we first examine the main contention of the applicant that the I.O. has acted as a Judge and Prosecutor and has examined him as if he has committed the mistake and he has to establish the charge. In this regard we have perused the departmental file and find from the proceedings that on the opening day of the inquiry on 12.5.88 the I.O. has initially asked the applicant questions as to whether he has received charge-sheet dated 22.2.88 and whether he admits those charges. After he confirmed the receipt of the charge-sheet and denied the charges the I.O. has examined him at great length on

that date as also on 19.5.88, 8.6.88, 22.6.88 and 23.6.88. As per Railway Servants (Discipline and Appeal) Rules, 1968 the Railway employee gets three chances expressly to speak out (1) when he is called for preliminary hearing under Rule 9(11) he may admit his guilt or deny it. In the case of admission, the inquiry may not be proceeded fully (2) Under Rule 9(19) when the Disciplinary Authority has closed its case and before the Railway Servant produces defence on his behalf, he shall be required to state his defence orally or in writing, as he may prefer. In case he chooses to give an oral evidence, it shall be reduced to writing and he will sign it. This is the opportunity when in his statement he may comment on the fallacies of the inquiry, the steps taken in the inquiry, the bias of the I.O. the main strength of his case, etc. etc. (3) Vide Rule 9(21) when the Railway servant has closed his case a duty has been cast upon the I.O. to give one more opportunity to the Railway servant. At this stage the I.O. shall question the Railway servant generally on the circumstances of the case appearing against him so that he may further deny or explain his case in the light of evidence recorded and establish his innocence. At this stage the I.O. should also try to couch his questions in the form so as to help the Railway servant to extricate himself and not to further reinforce the commission of misconduct against him. In the instant case, as far as it relates to the issue of charge sheet and the denial of charges, the I.O. has initially examined the applicant on 12.5.88 as per Rule 9(11) of the Rail way Servant (D and A) Rules but subsequent examination by the I.O. in such great length on that date as also on various dates as mentioned above is in clear violation of Rule 9(11) Rules 9(19) and 9(21) of Railway Servants (D and A) Rules, 1968. We would like to reproduce some of the questions put by the I.O. to the applicant which will go to reveal that the said examination is not provided under rules:-- Question No. 6 : Do you have any other service card apart from the service card which was given by the I.O.W. Bharuch and which you had submitted at the time of your initial recruitment.

Question No. 7: According to I.O.W's. letter No. E. 615/1 dated 27.10.87 it has been clarified that from December, 1981 to September, 1982 you have not worked as casual labour at all in Bharuch. What do you have to say? Question No. 8: In the above matter the service card submitted by you is bogus and by producing such a bogus certificate you have cheated the Railway Administration. Can you

produce any evidence in support of the genuineness of the service card? Question No. 12: You have been supplied a copy of the service certificate today where it is shown that you have worked under the I.O.W., Bharuch from 25.6.82, 26.7.82, 1.8.82, 7.8.82 and 9.8.82 and 10.9.82 and you have stated in your reply to question No. 11 that you have no other documents. Did you receive any wages/salary while working as casual labour during the aforesaid three periods and do you have any documentary evidence where you may have sent or put the thumb impression or you may have received the wages? Question No. 15: You have been charged in having produced bogus service card at the time of initial recruitment. Do you have any documentary evidence to prove that the charges is not correct.

Question No. 17: During the inquiry you have stated that the service card produced by you is not bogus. But you have not produced any document to show that you have worked during the period under I.O.W., Bharuch. Do you have any such evidence? Question No. 18: During the inquiry you have not produced any evidence which would go to falsify the charges levelled against him.

What evidence you wish to produce is to be decided by you. Any how you are given one more opportunity and you can think about it. What defence you want to put up on the next date.

Question No. 20: The names of casual labourers working in a unit or a workshop are entered in Register and his thumb impression or signature is also taken in the said register and at the time of discharge the service card is supplied so that they can seek employment elsewhere. So this in conformity with para 250-1 and 251-2 of the IREM. Is it clear? Question No. 21: I.O.W. vide his letter dated 27.10.87 has stated that as per the register maintained in his office from December 1981 to September 82 you have not worked as casual labour. Therefore, supplying the service card for the same period is not possible and clearly shows that the service card submitted by you is bogus. What do you have to say about this? The above questions leave no room for doubt that the examination of the applicant on the various dates before even the case of the prosecution is presented is totally unwarranted as per Railway Servants (D and A) Rules, 1968.

10. In addition to the above there are several other questions which are found in the daily proceedings of the inquiry which clearly show the attitude of the I.O. in conducting the inquiry. It is true that in the instant case no Presenting Officer is appointed and as per rules the I.O. is competent to examine and cross-examine the witnesses. But the applicant in the instant case has neither offered himself to be examined as a witness nor has he been cited as a witness to be examined or cross-examined by the I.O. In view of this, the action on the part of the I.O. in having examined the applicant in great detail and asking several questions in order to elicit a confession from him that the service card produced by him is false is certainly not warranted or covered under the rules. This clearly reflects a prejudice on the part of the I.O. in conducting the inquiry and confirms the contention of the applicant that he has proceeded with the preconceived notion that it is delinquent employee who has to prove that the charge levelled against him is not correct. The above prejudice is also reflected in the comment of the I.O. in his report dated 3.5.89 where he says that the said employee has also not produced any documentary proof (except the service card during the preventive check of CVI/RTM) that he had worked as casual labour under I.O.W., Bharuch during the said period as stated in answer to question No. 7. In a departmental inquiry the onus of proving the charges lies on the part of the departmental authorities and the delinquent employee is not required to disprove the charges.

The charge is that he had produced false service card and the department is required to prove this and it is not for the applicant to prove that he has not produced such a false card, The whole attempt on the part of the I.O. in subjecting the applicant to such detailed questioning seems to be to make him confess his guilt which is institution beyond the scope of Rules 9(11), 9(19) and 9(21) of the Railway Servants (D and A) Rules, 1968. Thus, the action of the I.O. in examining the applicant in violation of rules with a prejudiced mind would vitiate the entire proceedings.

11. As regards the contention regarding the competence of the AWM to issue the charge-sheet the respondents have stated that he is the DA and hence there is nothing irregular in his issuing the said charge-sheet. However, if the AWM is the DA it is not understood how the penalty has been imposed by the CWM, Dahod

and not by AWM. There is nothing on record to show that the AWM is the DA and the respondents have also not produced the delegation of powers in this regard to support their contention that the AWM is the competent DA in respect of the applicant. Hence, on this ground also the charge-sheet cannot be sustained in the eye of law.

12. We now examine the contention of the applicant that the original service card of his previous working has been mentioned in the charge-sheet was never shown to him and he was only given a copy of the same. We find from the statement of the applicant during the inquiry that he had asked original service card to be shown to him but the departmental file does not show that the original service card was ever produced during the inquiry. On the other hand, we find that as per letter dated 12.1.89 issued to the applicant Annexure-3 of the charge-sheet had been amended replacing the service card of his previous working submitted by him at the time of his initial appointment as casual labour by the copy of the said service card. This does not leave any room for doubt that the original service card was not produced and the entire inquiry is proceeded on the basis of only a copy of the said service card. Accordingly, we find that the contention of the applicant that the original service card was not produced during the inquiry is correct and since the same was neither produced during the inquiry nor was he allowed inspection of the same this amounts to denial of reasonable opportunity to him to defend himself.

13. In the light of the forgoing discussions we are of the considered view that the entire disciplinary proceedings have been vitiated and are unsustainable in law on the grounds already discussed in paras-9, 10, 11 and 12 (supra) and we do not consider it necessary to examine other contentions of the applicant. Since without considering the above factors the DA has passed the order of removal from service and the AA has also upheld the same without application of mind the impugned orders passed by the DA and AA deserve to be quashed.

14. In the result, we allow the O.A. and quash and set aside the order dated 2.6.92 (Annexure A-5) passed by the DA, order dated 25.1.93 (Annexure A-6) passed by the AA and direct the respondents to reinstate the applicant in service with

immediate effect without any back-wages from the date of removal from service upto the date of resumption of duties. However, we direct that the service rendered by him on a regular, basis prior to his reinstatement shall be counted as qualifying service for the purpose of pension only.

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