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Court : Delhi

Decided On : Mar-31-2003

Reported in : 2004(73)DRJ125; (2004)IILLJ432Del

Judge : D.K. Jain and; Madan B. Lokur, JJ.

Appeal No. : CW 6493/1998 and CM 12110/98 and 12254/02

Appellant : Pramod Kumar and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : H.K. Gangwani, Adv.

Advocate for Pet/Ap. : K.K. Patel, Adv

Disposition : Application dismissed

Judgement :

D.K. Jain, J.

1. A common order, dated 31 December 1997, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the Tribunal'), in O.A. No. 1670/92 and two other applications, is under challenge in this writ petition. By the impugned order, the Tribunal has declined to interfere with the penalty of removal from service imposed on the petitioners.

Since the issue involved in all the three cases is identical, these are being disposed of by this order. However, we shall treat the facts of Pramod Kumar as illustrative.

2. The petitioner, Pramod Kumar, a Substitute Loco Cleaner, working under Loco Foreman, Northern Railway, Moradabad, was proceeded against in departmental disciplinary proceedings for allegedly producing fake casual labour service card showing 380 days of service as casual labour under Inspector of Works, Balamau to his credit during the period 1978-1982; forging the signatures of Shri S.P. Jutla, the then Inspector of Works; securing employment as Substitute Loco Cleaner on the strength of the said card; producing fake scholar's register and transfer certificate, as affirmed by the Principal of an Inter college. The Enquiry Officer finally concluded that the charge of securing employment as Sub Loco Cleaner by producing a fake casual labour service certificate with forged signatures of the then Inspector of Works, under whom he claimed to have been worked, stood proved. However, the charge of producing fake scholar's register and transfer certificate and allegation of misleading of age and qualification was not proved.

3. Accepting the report of the Enquiry Officer, the disciplinary authority awarded to the petitioner punishment of removal from service. Aggrieved, the petitioner preferred statutory appeal to the Senior Divisional Mechanical Engineer, Moradabad. The appellate authority dismissed the appeal. For the sake of ready reference, order passed in the case of Pramod Kumar is reproduced below:

'The appeal of Shri Pramod Kumar has been considered by me carefully. I hold the view and therefore conclude that the procedure followed in the case has not resulted in violation of natural justice and the findings of the disciplinary authority are based warranted by evidence on record.

I therefore, consider the penalty imposed on Shri Pramod Kumar as adequate and hence confirm it '

Orders in other two cases are identically worded.

4. The petitioner carried the matter further to the Tribunal. As noted above, the Tribunal has dismissed the application. Hence the present petition.

5. We have heard learned counsel for the parties.

6. Mr. K.K. Patel, learned counsel for the petitioners, submits that departmental proceedings were initiated against some other employees of the Railways on similar allegations but the Tribunal as also this Court had quashed the same, inter alia, directing their reinstatement, without payment of back wages. Learned counsel would also submit that after observing that the order passed by the appellate authority was non-speaking, the Tribunal was not justified in upholding the view taken by the appellate authority. Mr. H.K. Gangwani, learned counsel for the respondents, on the other hand, has submitted that the facts of the present case are entirely different from those cases where reinstatement has been ordered either by the Tribunal or this Court.

7. Upon perusal of the appellate order, extracted above, we find substance in the contention of learned counsel for the petitioners that the order is non-speaking. Even the Tribunal has found it so. Notwithstanding this finding, the Tribunal has proceeded to test the correctness of the said order on the touchstone of the orders passed by the same appellate authority in some other cases and has held as follows:

'In the case of Pramod Kumar (OA 1670 of 1992) the impugned order of the appellate authority is also dated 6.4.1992 and is more or less couched in the same language and passed by the DRM-MB. There is no doubt that the appellate authority's order is not a speaking order and has not taken into account the grounds taken by the applicant in the appeal. therefore, for the reasons given in the Tribunal's order dated 9.7.1993 in the aforesaid two cases, the appellate authority's order is liable to be quashed and set aside with similar directions as were given therein to pass a speaking order in accordance with the extant rules. However, before doing so since the case of Pramod Kumar (OA 1670 of 1992) has been heard along with the other two cases in which the appellate authority has already passed an order in pursuance of the Tribunal's order dated 9.7.1993, we shall also deal with the grounds taken by the learned counsel in Pramod Kumar's

case.'

Holding thus, on merits the Tribunal came to the conclusion that since similar charges and findings had been given in the cases of the other two applicants and considered in the appellate authority's orders, the conclusion of the appellate authority on the question of penalty in petitioner's case could not be faulted. It has further observed that though normally it would have quashed the order passed by the disciplinary authority, being a non-speaking order, but having regard to the facts of other two cases, dealt with by the Tribunal in its earlier order, they would refrain from doing so.

We are unable to subscribe to the methodology adopted by the Tribunal in considering the merits of a particular case. As is evident from the afore-extracted order of the appellate authority, there is no reason whatsoever indicated therein for upholding the findings of the disciplinary authority, which again was a non-speaking order. The appellate authority merely observes that the procedure followed in the case of the petitioners has not resulted in violation of natural justice and, therefore, the findings of the disciplinary authority were justified being based on evidence on record. In our view, the orders do not show any application of mind on the part of the appellate authority to the facts of each of the cases. Since the orders of the authorities below entail serious consequence insofar as the career of an employee is concerned, these have to be reasoned and speaking orders.

8. For the foregoing reasons, we are of the opinion that the Tribunal was not justified in sustaining the orders passed by the appellate authority in all the three cases and dismissing petitioners' application.

9. However, having regard to the facts and circumstances of the case and bearing in mind the fact that the disciplinary proceedings were initiated some time in the year 1991, we feel that no useful purpose would be served by remitting the matter back to the Tribunal for reconsideration. Instead, while setting aside the order of the Tribunal, we remit the matter back to the appellate authority for reconsideration of the appeals filed by the petitioners afresh. We would further direct that the appeals shall be heard and disposed of by the authority concerned as expeditiously as practicable but in any case not later than four months from the

date of receipt of this order. An opportunity of hearing shall also be provided to the petitioners.

10. The writ petition as well as the applications for interim relief stand disposed of in the above terms with no orders as to costs.

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