

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00611/2018

Date of order 02.05.2019

CORAM

HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)

HON'BLE DINESH SHARMA, MEMBER (A)

- 1 Narendra Kumar, Son of Sri Parshuram, Substitute Safaiwala, under Chief Health Inspector, East Central Railway, Sonapur, District- Saran, PIN CODE- 851116 (Bihar).

..... Applicant.

By advocate: Sri M.P. Dixit.

Verses

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.-Digghi Kala, P.S.-Hajipur (Town), District-Vaishali at Hajipur, PIN CODE- 844101 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kala, P.S.-Hajipur (Town), District-Vaishali at Hajipur, PIN CODE- 844101 (Bihar).
3. The Chief Medical Director, East Central Railway, Hajipur,P.O.-Digghi Kala, P.S.-Hajipur (Town), District-Vaishali at Hajipur, PIN CODE- 844101 (Bihar).
4. The Divisional Railway Manager, East Central Railway, Sonenpur, P.O. & P.S.- Sonenpur, District, Saran, PIN CODE-841101 (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Sonenpur, P.O. & P.S.- Sonenpur, District Saran, PIN CODE-841101 (Bihar).
6. The Chief Medical Superintendent, East Central Railway, Sonenpur, P.O. & P.S.- Sonenpur, District Saran, PIN CODE-841101 (Bihar).
7. The Senior Divisional Financial Manager, East Central Railway, Sonenpur, P.O. & P.S.- Sonenpur, District Saran, PIN CODE-841101 (Bihar).
8. The Senior Divisional Medical Officer, (Dental), East Central Railway, Sonenpur, P.O. & P.S.-Sonenpur, District Saran, PIN CODE-841101 (Bihar).
9. Dr. Rashmi Kant, Senior Divisional Medical Officer, (Dental), East Central Railway, Sonenpur, P.O. & P.S.- Sonenpur, District Saran, PIN CODE-841101 (Bihar).
10. Sri Kumar Saurabh, Chief Health Inspector (Colony)-cum-Inquiry Officer, East Central Railway, Muzaffarpur, PIN CODE-842001 (Bihar).

..... Respondents.

By advocate: Sri B.K. Choudhary with Sri BindhyachalRai.

O R D E R (O R A L)

JAYESH V. BHAIKAVIA, MEMBER [J] : - In the instant OA, the applicant has prayed for quashing and setting aside the impugned order dated 27.06.2018 [Annexure-A/8] and the Inquiry

Report dated 28.05.2018 [Annexure-A/6] whereby he has been dismissed from service. The applicant has further prayed for a direction upon the respondents to post him on regular basis treating his initial appointment dated 08.04.1999 instead of 20.01.1976.

2. The brief facts of the case of the applicant is that he was initially engaged as Casual Labour, vide order dated 08.04.1999 and accordingly he joined as such on 04.05.1999. Subsequently he was granted Temporary Status w.e.f. 29.08.2000, vide order dated 17.08.2005 [Annexure-A/2]. Thereafter, the respondents conducted Screening Test on 28.01.2005 and 29.01.2005 for regular posting against Group-D post, in which applicant appeared and after considering the service record, he was declared successful in the said screening test, vide order dated 17.08.2005 [Annexure-A/2]. Accordingly his name figured at Sl. No.50 in the list of successful casual labour along with others who had passed screening test. In the said order dated 17.08.2005, the date of his initial engagement has also been recorded as 26.04.1999, and 2002 was further recorded as grant of temporary status to the applicant, and since then the applicant is continuously working in the department as regular casual labour against Group – ‘D’ post.

3. After more than 13 years of continuous service under Temporary Status, the applicant received one major penalty charge-sheet dated 05/06.09.2012 [Annexure-3], issued by the respondent no.9 wherein the charge leveled against is that “the applicant has obtained job as Casual Labour on the basis of the work experience on 20.01.1976. However, after the enquiry it is found that at the time of his date of initial appointment at that relevant time as per

applicant's date of birth was 10.05.1977, applicant was aged only 03 years 07 months, which was not possible practically to be appointed as Casual Labour on the basis of work experience. Therefore, by providing false information about having work experience, the applicant got employment". In the said charge-memorandum, in support of charges leveled against the applicant, the Disciplinary Authority has relied upon the following documents : -

- [i] Letter no.227 dated 12.04.1996 issued by the DRM[P], Sonapur;
- [ii] Letter no.227 dated 17.08.2005 issued by the DRM[P], Sonapur;
- [iii] Order No. 99 dated 08.04.1999 issued by the DRM[P], Sonapur;
- [iv] Birth Certificate of the employee.

The Disciplinary authority has also cited the name of witnesses, i.e. one Shri Baleshwar Ram, the then Chief Office Superintendent [Personnel]/DRM [P], Sonapur, as also ShriSatyendra Kumar Singh, Head Clerk [Personnel], Sonapur Division, ShriTarkeshwar Singh, of Gorakhpur Division, presently working as DMS-2, Store Depo, Gorakhpur as per Annexure-A/3 and A/4 of charge memorandum.

4. Thereafter, the applicant has submitted reply denying the allegations on 15.09.2012 followed by reminder dated 12.04.2013 and also requested to supply of relevant documents which are cited in the charge memorandum [Annexure-A/3 and A/4 referred]. It is further submitted that without supplying the relevant documents, the respondent no. 10, i.e. Chief Health Inspector (Colony)-cum-Inquiry Officer, East Central Railway, Muzaffarpur has been appointed as Inquiry Officer, who conducted the enquiry from time to time but the most relevant documents as well as additional

documents demanded by the applicants has not been supplied without any reason. It is further submitted that along with the applicant identically situated employees including one ShriAshutosh Kumar had demanded the documents which are part of charge memorandum, however, vide letter dated 22.02.2018, the office of Sonapur, East Central Railway, informed that the said letter/document are not available with their office [Annexure-A/5].

5. It is submitted by the applicant that during the departmental proceeding, relevant documents demanded by him, has not been supplied by the respondents without any reason, which is in flagrant violation of principal of natural justice, and in absence of such relevant documents, the respondent no.10 concluded the enquiry and asked the applicant to submit his defence statement/brief. The applicant submitted his defence statement/ brief on 26.05.2018. (Annexure-A/5). The applicant has raised the grievance about violation of principles of natural justice for not supplying the relevant documents. It was also categorically submitted by the applicant that he was engaged as a fresh casual labour in the year 1999 and not in 1976 on the basis of any past experience. The copy of letter dated 12.04.1996 on the basis of it the charges leveled against the applicant has not been supplied, and therefore, the charges leveled against the applicant be dropped.

Thereafter, the applicant received copy of report of the enquiry officer dated 28.05.2018 [Annexure-A/7]. In the said report it has been reported that the charges leveled against him as

per charge memorandum dated 23.05.2012 [Annexure-A/3], is held to be “partially proved”.

6. In response to the said report, the applicant has submitted his detailed reply on 13.06.2018 (Annexure-A/7). Learned counsel for the applicant further submitted that from perusal of the Charge Report submitted by respondent no.10 on 28.05.2018, clearly shows that the basic allegation leveled in the said Charge Sheet dated 23.05.2012 is not proved but how it has been stated to be partially proved is unknown to the applicant as he has been engaged as Casual Labour on 04.05.1999 and this fact has been accepted by the respondent no.10 in his report dated 28.05.2018. The applicant had also submitted his detailed representation dated 13.06.08.2018 and again brought to the knowledge of Disciplinary Authority that the charges leveled against him is not proved in the report of Enquiry Officer. The applicant also submitted that he was never appointed as Casual Safaiwala as also he was never engaged by the respondents before he attained the age of 18 years, no witness has supported the allegations leveled against the applicant. The applicant further submitted that on the presumption and doubt, he cannot be held guilty for the alleged mis-conduct.

However, the Disciplinary Authority has not considered the defence of the applicant in its true spirit and without issuing any disagreement notice, the respondents has issued the impugned orders dated 27.06.2018 [Annexure-A/7], whereby it is erroneously held that since the applicant has admitted that he had never work as Casual Sweeper before his engagement as casual labour and as per the office order no.185 dated 08.04.1999, only the ex casuallabour

was required to be engaged as casual labour thereby the applicant has obtained job by suppressing the fact that he had any experience. The said finding of the disciplinary authority is perverse, contrary to the materials on record. The said authority ought to have considered the fact that the applicant was born in the year 1972 and he cannot have work experience of casual labour in the year 1976 as alleged in the charge memorandum. Admittedly the applicant was engaged by the respondent department themselves in the year 1999 as a fresher and the said fact was corroborated in the order passed by the respondents on 17.08.2005 while declaring the applicant successful in the screening test.

7. Being aggrieved by the dismissal order dated 27.06.2018 [Annexure-A/8], the applicant preferred an statutory appeal on 13.06.2018 before the appellate authority but the same has been rejected without assigning any reason, which is contrary to the Railway Board's order and judicial pronouncements of Hon'ble Supreme Court, High Courts and Central Administrative Tribunal, hence this OA.

8. The applicant has placed reliance upon an order dated 25.04.2017 passed in CWJC No. 12812 of 2016 by the Hon'ble High Court, Patna wherein the Inquiry Officer has submitted his report holding the charges "partly proved" has been condemned by the Division Bench of the Hon'ble High Court, Patna and held as under :-

"Yet another submission made on behalf of the petitioner is that there is an error committed by the Enquiry Officer when he has recorded his opinion that the charge is partially proved, which in turn, is a contradiction in terms and more so what was found to be partially proved has been left delightfully vague by the Enquiry

Officer. If these are the foundational facts and findings, the submission is that could it form the basis for imposition of punishment of compulsory retirement which has serious consequences for the employee and in turn his family. What was the basis for the disciplinary authority to come to a conclusion that the charges were established when the Enquiry Officer did not say so in so many words, in fact, his finding is otherwise.”

Considering the above submission, the Division Bench of the Hon’ble High Court, Patna has been pleased to hold as under:-

“If this is what emerges from the procedure which was held against the petitioner then with due respect even to the Central Administrative Tribunal their opinion that due procedure was followed and no natural justice was violated is a serious error committed on their part for the reason that they should have gone through the enquiry report and the findings which was reached by the Enquiry Officer which does not pronounce the petitioner to be guilty which necessitated severe punishment of compulsory retirement.”

Therefore, ld. counsel for the applicant submitted that in the case of the applicant also the enquiry report and findings thereof, does not pronounce the applicant to be guilty which necessitated severe punishment of dismissal from service.

9. Respondents have filed their written statement wherein it has been stated that a Group- ‘D’ railway servant who has been dismissed or removed from service, may file/prefer an appeal, if he desires to do so in view of statutory provisions of the Railway Servants (Discipline and Appeal) Rules, 1968. It has further been stated that in the case of the applicant, the applicant has not filed any revision within 45 days from the date of appellate authority’s order, before the competent authority, which is a mandatory requirement and not an optional remedy and non-exhausting of the said remedy would stand in the way of the applicant in approaching this Tribunal, therefore, this OA is pre-mature accordingly. The main contention of

the respondents is that the applicant has not exhausted all the remedies available under the statutory service rules for revision before approaching this Tribunal, which amounts to premature of this OA. They further preferred a judgment passed in the case of R.K. Singh Vs. Union of India wherein it has been held that even under Article 226 of the Constitution of India, the High Court does not entertain a writ application where the aggrieved person has not exhausted all the alternative remedies available to him. They prayed for dismissal of this OA accordingly. It is further submitted that in the year 1999 a person who has past experience of casual labour [Safaiwala] can only be considered for engagement as casual labour. Since the applicant had admitted that he was not having any past experience, he was not eligible to be engaged as casual labour, and therefore, the disciplinary authority has rightly found the applicant guilty for the charges leveled against him.

10. Heard the learned counsel for the parties and perused the materials records.

11. It is noticed that the applicant was served with one major penalty charge-sheet dated 05/06.09.2012 [Annexure-3], wherein the charge leveled against the applicant is that "he has obtained job as Casual Labour on the basis of the past work experience, vide letter dated 12.04.1996, that during the preliminary enquiry, it was found that applicant's date of birth was 25.05.1972 and the applicant was engaged on the basis of his experience as Safaiwala since 1976, at the relevant time he was only 03 years 07 months, hence he cannot have any past work experience which was practically not possible.

However, the applicant was engaged as casual labour on the basis of his claim to have past experience and therefore, the applicant has obtained the job on false declaration and thereby violated the service rules". It is further noticed that the aforesaid charge memorandum dated 05/06.09.2012 issued by the Respondent No.9 by relying upon one letter dated 12.04.1996 [the so called preliminary enquiry report, which has doubted the eligibility of the applicant to be engaged based on his past experience since 1976]. It is noticed that the said relied upon document dated 12.04.1996 was never supplied to the applicant-delinquent though it was demanded by the applicant.

Further it is noticed that, the enquiry officer in its report dated 28.05.2018 [Annexure-A/6] has recorded his findings to the effect that the document RUD-1 letter no.227/Sonepur dated 12.04.1996 relied upon by the Disciplinary Authority is found to be doubtful, and further also observed that no witnesses has supported the charges. However, he has observed that the applicant-delinquent has admitted that they were never engaged on the basis of his/their past experience and were engaged as fresher "new recruits" in the year 1999. The documents produced by the applicant delinquent of the year 1993 of his initial engagement also not found doubtful. therefore, on the basis of these materials on record, it is not found appropriate to reach any final decision/conclusion. In spite of this observations, the Enquiry Officer opined in his report that the charges leveled against the applicant are partially proved. The said conclusion of the Enquiry Officer is contradictory to the material on record as such vague in

nature. The charges leveled against the applicant needs to be proved by the authority who allege against the delinquent.

13. It can be seen that the disciplinary authority has acted beyond the charge leveled against the applicant. It is also noticed that no material has been placed on record which indicate that the applicant delinquent has obtained engagement as temporary casual labour on the basis of false declaration. As such there is no evidence on it. During the enquiry, the IO has recorded its finding that the documents relied upon by the Disciplinary Authority has not been reliable. However, the Disciplinary Authority recorded its findings that “since the applicant failed to submit or produce any document for past experience and considering the date of birth of the applicant i.e. 10.05.1977, it appears that letter dated 22.04.1993 by which the applicant’s name was nominated for safaiwala [without salary] as as a fresh recruit at the relevant time, the applicant was below 18 years of age. Further, it is observed that the Enquiry Officer has doubted the statement of one B.K.Jha, the then Personnel Superintendent, Barauni who had conducted screening test in the year 2005.” Only on the basis of these reasons the disciplinary authority came to the conclusion, that the charges leveled against the applicant has been established and proved. The said findings recorded by the Disciplinary Authority is in fact contrary to the material on record as also beyond the charge leveled against the applicant. The Enquiry Officer has opined that the charges were partially established without any basis and the disciplinary authority has also without having any material to sustain the charges and held that the applicant is guilty. The said conclusion

of the disciplinary authority as noticed hereinabove is without any evidence and the foundation of the such findings are contrary to the material on record.

It is the charge leveled against the applicant that on false declaration, the applicant has obtained the job. In fact, no material or documents has been placed on record which can be said that the applicant has submitted any declaration or disclosed that he had past experience of Safaiwala in the year 1976. On the contrary, the applicant delinquent has successfully established the fact that his engagement as Safailwala or Casual Labour by the respondents was as new recruitee or in other words a new face which corroborated by the documents on records. It is not proved contrary to the fact that the applicant was granted temporary status in the year 2002 and thereafter, he was subjected to the screening test in the year 2005 wherein he was declared successful by the railway authorities and on verification of service record he was granted temporary status against Group-D post. Accordingly, the applicant is continuing in service. In absence of any such evidence, it cannot be said that charges leveled against the applicant has been established or proved. Therefore, the conclusion arrived by the disciplinary authority is vitiated by not following the principle of natural justice as well as the same is based on no evidence, hence suffer from infirmities.

14. Further, from perusal of the records it is further emerged that the Inquiry Officer has submitted his report holding that the charges are partially proved but the said opinion is found to be vague as noticed hereinabove, as well as the impugned decision of the

disciplinary authority and the appellate authority are also not tenable in light of the judgement of Hon'ble High Court of Judicature at Patna in CWJC No.12812 of 2016 decided on 25.04.2017 [supra] The Tribunal further noticed that the Disciplinary Authority issued the removal order dated 30.08.2018 [Annexure-A/9] without applying his mind on the enquiry report submitted by the Enquiry Officer as also without having any substantial documents. It is further noticed that the appellate authority also missed to apply his mind on the infirmities as pointed out by the applicant in his appeal and rejected the same on 11.10.2018 [Annexure-A/11] in a cryptic manner. It is noticed that the respondents had issued charge memorandum against the applicant and identically engaged other similarly placed employees with identical charges and without any evidence on record on the basis of presumption, major punishment of dismissal has been imposed. Experience of Safai work cannot be possessed at the tender age of three years. As such, the allegations leveled in all the similar cases appear to be just to terminate the service of applicant/s working since last twelve years, that too after remained successful in the screening test. Since, it is found that impugned orders of punishment suffers from infirmities, we do not find it appropriate to remit the matter back to the Respondents just to prefer appeal/revision by the applicant. Therefore, the submissions of the respondents and the judgement relied upon in this regard are not accepted to avoid multiplicity of the litigation as also considering the fact that the applicants are working as Safaiwala.

15. In view of the aforesaid observations, the OA is allowed. The impugned orders dated 30.08.2018 [Annexure-A/9] and 11.10.2018 [Annexure-A/11] are quashed and set aside. The respondents are directed to consider the case of the applicant for his reinstatement in service forthwith, preferably within a period of sixty days from the date of receipt of a copy of this order. No costs.

Sd/-
[Dinesh Sharma]/M[A]

Sd/-
[Jayesh V. Bhairavia)/M[J]

mps