
(2001) 10 MP CK 0035
In the Madhya Pradesh High Court
Case No : Writ Petition No. 287/99

Gambhir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Citation : (2002) 1 MPHT 205 : (2002) 3 MPLJ 323

Hon'ble Judges : Bhawani Singh, C.J.; S.L. Kochar, J

Bench : Division Bench

Advocate : Sujay Paul, for the Appellant; S.K. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

This writ petition is directed against the order of the Central Administrative Tribunal (CAT), dated December 16, 1997, passed in O.A. No. 558/95.

The petitioner alleges that he was engaged Casual Labourer by the respondents. He performed duties from 28-11-1972 to 18-7-1974 reflected in the records of the respondents. Subsequently, he was engaged in 1988. While he was engaged during 28-11-1972 to 18-7-1974, he performed duties as Casual Labourer at Bhopal and in 1988 at Guna. He possessed duty card, however, he has been proceeded departmentally on the charge that he produced forged casual labour service card. The Enquiry Officer found that he served from 1972 to 1974, but there was no corresponding entries in the office record. There is also indication that Shri S.K. Khanna took charge in 1986, therefore, casual labour service card could not bear his signature, as such, the same is bogus. The petitioner was removed from service, which action he challenged before the CAT.

From the decision impugned in this case, it appears that the Tribunal has come to the conclusion that the petitioner served the respondents during period 1972 to 1974 and 1988, having been admitted by the office record. However, the

finding of the Tribunal with respect to service card being bogus, is based on the conclusion that Shri S.K. Khanna was not working at the time when the service card was issued. But with respect to punishment, the Tribunal comes to the conclusion that the punishment of removal was serious. Therefore, the case has been remitted to the Competent Authority for consideration of the question of quantum of punishment taking into consideration obviously the fact that the petitioner had served during the period 1972 to 1974. Through this petition, the petitioner has challenged the order of the CAT dated December 16, 1997.

At the outset, we record the objection of Shri S.K. Mukherjee, learned counsel appearing for the respondents, that this writ petition is not maintainable because after the Tribunal's order, the respondents have passed the order dated 9-2-1998 maintaining the punishment of removal against the petitioner, which ought to have been challenged by the petitioner instead of approaching this Court assailing the order of the CAT dated December 16, 1997. We are not impressed by this submission.

It may be true that the respondents took decision dated 9-2-1998 after the order of the CAT dated December 16, 1997. Perusal of CAT order demonstrates that it directs the respondents to consider the case as to quantum of punishment. So far as lapse is concerned, finding appears to be against him. Therefore, the petitioner has to assail it by filing the writ petition. In the event of his success, the order dated 9-2-1998 is rendered inconsequential. Therefore, the objection of the respondents is not sustainable and is rejected. The writ petition is maintainable.

The next question is whether the charge against the petitioner has been proved. Before dealing with this question, appropriate it would be to mention the nature of charge. The charge-sheet alleges that the petitioner procured casual labour service Card No. 271308 from somewhere, which has not been issued by the Railway Administration, bearing forged signature, seal and entries thereby obtained the service, which amounted to cheating the administration. Therefore, the evidence on this allegation has not to be adverted to. The respondents have examined G.L. Saini, Dealing Head Clerk of its department. This witness states that as per register, the petitioner worked from 28-11-1972 to 18-12-1972, 21-12-1972 to 18-8-1973, 21-8-1973 to 18-4-1974 and 21-4-1974 to 18-7-1974. The register bears thumb impression of the petitioner. This witness further states that the service card possessed by the petitioner had not been issued from his office. This witness states that the seal and signature on the service card of the petitioner resemble with seal and signature of S.K. Khanna. He also states that since the date of issue of service card is not mentioned, therefore, it could not be clearly said who IOW and Time Keeper was at the depot at that time. Shri S.K. Khanna remained at the depot from 27-7-1986 to 24-8-1987. When asked about comments written in English, he states that the same appeared to have been written in the hand writing of the former Chief Executive Inspector Shri Pooranchand Chhatwani. On the crucial question as to

the service card being forged, the witness states that as per register No. 1, page No. 78 item No. 4, it is tallying with the period between 27-11-1972 to 18-7-1974, during which the petitioner must have worked, therefore, sympathetic consideration to him should be taken.

The Enquiry Officer concludes that the signature, seal and entries on the service card tally with the original records and the same are correct. Simply because, the Enquiry Officer states that the corresponding entries with respect to issuance of service card is not in the office record, it cannot be said that the service card is forged. The Enquiry Officer has clearly found that the petitioner had worked with the respondents.

Shri S.K. Mukherjee, learned counsel appearing for the respondents, submits that the petitioner admits that the service card was issued by the Office in 1984. But during 1984, Shri S.K. Khanna was not in office, therefore, the service card bearing signature of Shri Khanna could not have been issued. This fact has been admitted by the petitioner. As such, the service card is forged.

The petitioner has not admitted that the service card was issued to him by Shri S.K. Khanna. In answer to question No. 9, he states that at that time, IOW was Shri S.K. Khanna, but he did not know about the clerk, who handed over service card to him. It may be recorded that there is no dispute about the engagement of the petitioner for certain period recorded in the official records. This fact is stated by the petitioner supported by the witness of the respondents. Therefore, the consequence is that he can be issued service card by the respondents. The question is whether it has been proved by evidence that the service card in question is forged. The charge is that the signature on the service card is forged, seal is forged and entries are forged, The finding of the Enquiry Officer the signature is genuine, seal is genuine and entries are genuine. That being the position, the charge is not proved. The evidence has to be read as a whole. The substance tilts in favour of the petitioner and goes against the respondents. Some minor mistake here or there will not harm his cause. After all he is illiterate daily wage, giving statement in a departmental enquiry after 10 years of the incident at a time, when he lost his wife and son in Bhopal Gas Leak Tragedy. With this background, the evidence has to be examined, analysed and appreciated for arriving at correct conclusion. Having examined the evidence with this background, we have no difficulty in holding that the charge against the petitioner has not at all been proved. Therefore, his removal is illegal and liable to be set aside. The conclusions drawn by the CAT on this aspect of the matter are not supported by evidence, therefore, they are liable to be set aside. Similarly, the departmental enquiry holding him guilty can be quashed along with punishment of removal awarded to the petitioner.

Consequently, what emerges out of the aforesaid discussion is that the writ petition is allowed. The departmental enquiry, punishment of removal awarded to the petitioner and the order of the CAT dated December 16, 1997, are set aside. The petitioner shall be deemed to be in service throughout.

Now, the question is whether he should be paid backwages. Shri S.K. Mukherjee, learned counsel appearing for the respondents, contends that the petitioner was a casual labour, therefore, it would be difficult to consider him in continuous service and paid accordingly. Shri Sujay Paul, learned counsel appearing for the petitioner, submits that in case the petitioner is taken to be in continuous service, he would have been considered and regularised by this time and he would have got regular scale of pay. We find that the petitioner worked for certain spells with the respondents in 1972, 1973, 1974 and 1988. Thereafter, he was employed for some years preceded by removal from service. Since the petitioner did not discharge duties with the respondents and in absence of pleadings that he remained completely without employment during this time, there is no justification to allow him backwages. However, we direct the respondents as under:--

(i) The petitioner shall be deemed to be in continuous service from 1988. His case shall be considered for regularisation on the lines on which the case(s) of his juniors were considered for regularisation.

(ii) In case, his juniors have been regularised from particular date, he shall be regularised from date prior to that.

(iii) The petitioner, being so regularised, shall be entitled to all the consequential benefits, in terms of pay scale, enhanced pay scale, increments, seniority etc. etc.

The petition is allowed in terms aforesaid. The parties shall bear their own cost.

Writ Petition allowed.