

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 20.05.2010**

+ **WP(C) No.13638/2009**
(Arising from OA No. 1042/2009)

UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Manjuddin Khan Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13625/2009**
(Arising from OA No. 1105/2009)

UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Ram Dayal Meena Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13626/2009**
(Arising from OA No. 1219/2009)

UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Shakrudeen Khan Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13629/2009**
(Arising from OA No. 1116/2009)

UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Sharif Mohd. Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13634/2009**
(Arising from OA No. 1234/2009)
UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Nissar Khan Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13635/2009**
(arising from OA No. 1096/2009)
UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Raghubir Singh Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13636/2009**
(arising from OA No. 1140/2009)
UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Hari Narain Verma Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13637/2009**
(arising from OA No. 1277/2009)
UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Giriraj Prasad Meena Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13639/2009**
(arising from OA No. 1119/2009)
UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Kailash Chand Barwa Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

+ **WP(C) No. 13640/2009**
(arising from OA No. 1221/2009)
UOI Petitioner
Through Mr. Chandan Kumar, Advocate

Versus

Shri Virender Pal Singh Respondent
Through Mr. A.K. Behera and Mr. Manjeet Singh
Reen, Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.
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1. This common order will dispose of all the above noted writ petitions which have been filed against the common order dated 18th September, 2009 passed by the Central Administrative Tribunal,

Principal Bench in OA 1042/2009 titled as Sh. Manjuddin Khan Vs. Union of India through General Manager Northern Railway; OA No. 1096/2009 titled as Sh. Raghubir Singh Vs. Union of India through General Manager Northern Railway; OA No. 1105/2009 in Shri Ram Dayal Meena Vs. Union of India through General Manager Northern Railway; OA 1116/2009 in Shri Sharif Mohd. Vs Union of India through General Manager Northern Railway; OA No. 1119/2009 in Shri Kailash Chand Barwa Vs. Union of India through General Manager Northern Railway; OA 1140/2009 in Shri Hari Narain Verma Vs. Union of India through General Manager Northern Railway; OA 1219/2009 in Shri Shakrudeen Khan Vs. Union of India through General Manager Northern Railway; OA 1221/2009 in Shri Virender Pal Singh Vs. Union of India through General Manager Northern Railway; OA 1234/2009 in Shri Nissar Khan Vs. Union of India through General Manager Northern Railway; OA 1277/2009 in Shri Giriraj Prasad Meena Vs. Union of India through General Manager Northern Railway, whereby the original applications of the respondents in different writ petitions were allowed and the impugned order passed against the respondents were set aside and the petitioners were directed to reinstate the respondents in different writ petitions forthwith. The respondents were also held to be entitled to consequential benefits as admissible in law. However, the petitioners were permitted to initiate the inquiry from the stage of initiation of inquiry which was directed to be entrusted to an officer other than the officers from vigilance department of the petitioner.

2. The respondents in different writ petitions are erstwhile casual workers and they were appointed as substitute Khalasi. The respondents were charge sheeted under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1987 for gaining appointment as substitute Khalasi in connivance of Jhelum Singh, Senior Clerk and Rattan Kumar, MCC through forged casual labour service card showing the casual labour service rendered for 123 days. The charge sheets were issued to all the respondents in 1994 after a preliminary investigation conducted by the Vigilance Branch of the petitioner.

3. The respondents had challenged the different charge sheets initiated against them, inter alia, on the ground that they had sought additional documents required for defense and for the purpose of effective cross examination such as their personal files and assumed duty register including pay rolls, muster rolls etc. However, these documents were not produced by the petitioner without any rational justification. Before the Tribunal, the order of punishment was also challenged on the ground that though in *Giriraj Prasad Meena v. Union of India and ors*, O.A No.1615/2008 decided on 9th February, 2009 and *Sh.Jagbir Singh and Ors v. Union of India & Ors* being O.A No.1357/2007 connected with O.A No.1413/2007 decided on 19th September, 2007 the revisional authorities were directed to pass a reasoned order, however, the direction of the Tribunal was not complied

with. It was contended by the respondents that there was no direct evidence against them that they had obtained bogus cards or had forged the cards, however, by a non speaking order and merely on suspicion and on the basis of preponderance of probability the penalty for compulsory retirement had been imposed. The penalty imposed was also challenged on the ground that pay slips, pay register, muster roll, assumed duty register and personal files were not produced which was the best evidence available with the petitioner to demonstrate that the respondent had not worked as casual labour but had obtained a bogus casual labour certificate and in the circumstances the defense of the respondents was gravely effected and that they were also deprived of a reasonable opportunity. Reliance was also placed by the respondent on *Trilok Nath v. Union of India & Ors*, 1967 SLR SC 759 and *Mahabir Singh & Ors v. Union of India & Ors*, 2000 (3) ATJ CAT I to contend that a casual labour card was not to be approved for employment of casual workers and therefore, in the circumstances there was no necessity or requirement for the respondent to have obtained the bogus card.

4. The petitioner had contested the pleas of the respondents contending inter-alia that before imposing the punishment the procedure as per rules had been followed and the punishment imposed on respondents is commensurate with their misconduct. It was also asserted on behalf of petitioner that pursuant to the directions given in earlier original applications filed on behalf of some of the casual

labours, a sympathetic view was taken by the revisional authority and the order of punishment of removal was toned down to order of compulsory retirement.

5. The Tribunal, while allowing the original applications had noted that Inquiry Proceedings were conducted by one retired officer and two delinquents, who had been punished for issue of bogus casual card and later on also gave evidence against the respondents and other officials. The respondent were also guilty of charge of holding bogus employment card on the basis of preponderance of probability and on the ground that the respondents were the only beneficiaries of the certificates though, no direct evidence was produced by the petitioners nor the documents which apparently were relevant for the determining the culpability of the respondents, were not produced during the inquiry.

6. The tribunal also noticed that before the disciplinary proceedings, vigilance investigation was carried out and the charge sheet was issued on the basis of alleged investigation by the vigilance department. It was held that appointment of enquiry officers from the vigilance officers would have the probability on the part of vigilance enquiry officer to uphold the charges leveled against the respondents in the enquiry proceedings and justify their vigilance report and relied on the decision of Union of India and Ors v. Prakash Kumar Tandon, 2009(1) SCALE

175. The Tribunal also noticed that though the petitioner was in possession of relevant documents such as pay slips, pay register, muster roll, assumed duty register and personal files, non production of the same adversely effected the respondents. It was also held that the enquiry officer was duty bound to record the reasons while refusing to consider the relevant documents, however, the enquiry officer rejected the documents only holding that they were irrelevant without specifying or eLabourating as to how those documents were irrelevant. The Tribunal also noticed that the statement of witnesses recorded earlier were taken on record in the enquiry without giving a right or opportunity to respondents to cross examine such witnesses whose statements were not recorded during the enquiry proceedings which was contrary to the procedure laid down under letter dated 17th March, 1977 stipulating that the statements made during the preliminary investigation are admissible except that such statements must be read to the witness and admitted by them. Such a procedure admittedly was not followed by the petitioner and, therefore, the testimony relied on by the enquiry officer could not be relied on and in absence of such testimony the inferences as drawn by the disciplinary authority could not be reached.

7. The Tribunal also considered that the enquiry officer despite the presence of presenting officer assumed the role of prosecutor in as

much as the enquiry officer who was also from the vigilance department cross examined the witnesses with the intention to fill up the gaps in the testimony of such witnesses which was in a biased manner and had thus vitiated the enquiry. The Tribunal also noticed that there was no direct evidence against the respondent to have obtained appointment by bogus casual service card but the disciplinary authority allegedly applied preponderance of probability. It was also noticed that under Rule 27 of Railways Rules, the appellate authority was duty bound to consider the illegality in the procedure and proportionality of punishment but the order passed by the appellate authority is bald without containing any reasons and in the totality of the facts and circumstances the Tribunal set aside the order of punishment of compulsorily retiring the respondents and directed the petitioner to reinstate the respondents in service and also granted them consequential benefits as admissible in law and also held that it will not preclude the petitioner to take up the proceedings from the stage of initiation of enquiry which should be entrusted to an officer other than the officer from vigilance department.

8. While setting aside the punishment of compulsory retirement imposed by the petitioner, the Tribunal also relied on Union of India & Ors. Vs. Gyan Chand Chattar, 2009 (8) SCALE 575, holding that there is a distinction between proof and suspicion and an employee cannot be

punished merely on the basis of suspicion. Reliance was also placed on Mahabir Singh & Ors. Vs. UOI & Ors. 2000 (3) ATJ CAT 1, holding that the casual labour card was not needed to be approved for employment of casual workers. The Tribunal while setting aside the order of compulsory retirement relied on Union of India & Ors. Vs. Prakash Kumar Tandon, 2009(1) SCALE 175 and also held that since the Vigilance raid was conducted by the Vigilance Department, the appointment of the inquiry officer from Vigilance Department was not appropriate.

9. The learned counsel for the petitioner has challenged the orders passed in different original applications filed by the respondents and has raised the same grounds which were raised before the Tribunal contending inter-alia that though there may not be direct evidence against the respondents but on the basis of preponderance of probabilities it can be inferred that the bogus casual cards were obtained by the respondents. The learned counsel for the petitioner has also contended that since the Tribunal has set aside the enquiry proceedings and has also permitted the petitioners to take up the proceedings from the stage of initiation of enquiry by appointing an officer other than the officers from the vigilance department, therefore, the tribunal could not award consequential benefits to the respondents as the same should have been left to be decided by the petitioner in accordance with law after culmination of the fresh enquiry and

depending on the final outcome. The reliance has been placed by the learned counsel for the petitioner on (2005) 8 SCC 211, U.P State Textile Corpn. Ltd v. P.C.Chaturvedi and Ors. The learned counsel for the petitioner has also relied on 1963 (3) SCR 25, State of A.P v. S.Sree Rama Rao to contend that the High Court while exercising jurisdiction under Article 226 of the Constitution does not sit as a Court of appeal over the decision of the authority holding a departmental enquiry and it is only to see whether the enquiry has been held by the competent authority according to the procedure prescribed and whether the rules of natural justice have been observed. It is further contended that if there is some evidence which the authority has accepted and which evidence may reasonably support the conclusion that the officer is guilty, it will not be a function of the Court exercising its jurisdiction under Article 226 of the Constitution of India to review the evidence and to arrive at an independent finding on the evidence.

10. The learned counsel for the respondents, Mr.Behera challenged the pleas and contentions of the petitioner contending inter-alia that the case of petitioner against respondents is of no evidence. It is contended that even on the basis of preponderance of probabilities no such inferences as has been drawn by the petitioners can be arrived at because there is no evidence against the respondents as they do not benefit from the alleged bogus casual labour card. It is contended that

the best evidence which could have proved or demonstrated that respondents were not employed as casual labours and so the labour card got issued by them were bogus, had been withheld by the petitioner such as pay slips, pay register, muster roll, assumed duty register and personal files and, therefore, it cannot be held that the casual labour card was obtained by the respondent. It is contended that merely on the basis of the testimony of the witness Jhelum Singh, it could not be concluded that the casual labour card was bogus. The implication and culpability of the respondents for obtaining the bogus casual card was also refuted on the ground that casual labour card need not to be approved for employment of casual workers and relied on Mahabir Singh & Ors v. Union of India & Ors, 2000 (3) ATJ CAT I. The learned counsel, Mr.Behera has raised similar pleas which were raised before the Tribunal which have been accepted by the Tribunal as that the respondents had been punished on mere suspicion and the orders imposing punishment are perverse as there was no direct evidence and in the absence of the relevant documents which ought to have been produced by the petitioner, no adverse inference could be taken against the respondents even on the basis of preponderance of probability. The learned counsel for the respondent, Mr.A.K.Behera has relied on 2009 (91) SCT 563, Union of India &Ors v. Prakash Kumar Tandon holding that the enquiry officer could not be from the vigilance department as there could be an element of bias to substantiate the finding as a vigilance officer during the enquiry proceeding also and it would be in

violation of the principles of natural justice. Reliance was also placed by Mr.Behera on the decision of this Court in W.P(C) No.8414-8416/2006 titled as Union of India & Ors v. Vinod Kumar decided on 26th October, 2009; W.P(C) No.13894/2009 titled as Union of India & Ors v. Shri Ram Kishan decided on 23rd December, 2009 and W.P(C) No.506/2010 titled as Union of India & Ors v. Babu Lal Meena decided on 25th January, 2010.

11. The learned counsel for the petitioner cannot refute the decision of the Supreme Court in Mahabir Singh & Ors (Supra), holding that the casual labour card need not to be approved for employment of casual workers. If that be so there was no necessity for the respondent to forge the casual labour card. Even the enquiry officer and the disciplinary authority have held that there is no direct evidence against the respondents. If there is no direct evidence, what is the evidence in order to show that the respondents had obtained the bogus casual labour cards. The mere statement of Jhelum Singh, as has been emphasized by the petitioner is not sufficient. Rather it cannot be construed as evidence unless it could be proved on the basis of the record of the petitioner that the respondents had not been employed as a casual labour during the relevant period. Nothing of substance has been shown by the learned counsel for the petitioner on the basis of which applying the principles of preponderance of probability it can be

inferred that the respondents had forged the bogus casual labour card or obtained them and they would have been benefited from the same.

12. The respondent would forge the bogus casual labour card only if they had not worked during the period they were alleged to have been employed as a casual labour. If the respondent had not been employed as a casual labour this would be reflected from the documents which were sought by the respondents which included pay rolls, muster rolls, personal files, assumed duty register etc. The petitioners had not produced these documents nor had disclosed any cogent reason for not producing the same. Rather in Ram Kishan (Supra), the Tribunal had set aside the enquiry proceedings on account of inordinate delay and on account of not producing these relevant documents which are muster rolls, attendance register of the relevant period in case of Khalasi under Northern Railways who were also accused of forging the casual labour card and had set aside the enquiry proceedings which order was upheld by this Court in W.P(C) 13894/2009 titled as Union of India & Ors v. Shri Ram Kishan. Even in Vinod Kumar (Supra), it was held that non production of casual labour register and payment vouchers etc which were sought by the persons accused of forging the casual Labour card, it was held that it would be denial of principles of natural justice and since the relevant documents were not available, the enquiry could not proceed against such employees who were alleged to have forged the

documents. It was held that the petitioner, Union of India could not be allowed to short circuit the procedures as whether the casual Labour cards were forged or not could be ascertained only from the documents for the relevant period showing whether such employees were employed as a casual Labour or not and not merely on the basis of oral statement of an employee of the petitioner.

13. The plea of the learned counsel for the petitioner that the burden to prove, that the casual Labour card was not forged was on the respondent, cannot be accepted in the present facts and circumstances. The Apex Court in the case of Mahabir Singh & Ors (Supra), has already held that casual labour card was not to be approved for employment of casual workers and in the circumstances, if the allegation of forging the casual Labour card was made by the petitioners, the petitioner ought to have produced the relevant documents for the relevant period to show that they were not employed as a casual Labour during that period. In the circumstances, it could not be held that the burden was on the respondents. It is apparent in the facts and circumstances that the burden was on the petitioner which the petitioner failed to discharge and in the circumstances, the reasoning of the Tribunal and setting aside the orders imposing punishment cannot be faulted.

14. The plea of the petitioner that since the scope of judicial review is limited and, therefore, the Tribunal could not have interfered with the decision of the petitioner also cannot be accepted in the present facts and circumstances as there should have been some cogent or reliable evidence to prove the charge against the respondent that they had forged the casual Labour card. Although the charge in the departmental proceedings is not required to be proved like a criminal trial that is beyond all reasonable doubts, however, while analyzing the evidence and documents to prove the charge, the petitioner could not take into consideration of irrelevant facts nor could refuse to consider the relevant facts. The decision of the petitioners could not be based on the assumptions nor the burden of proof could be shifted to the respondent. In the entirety of facts and circumstances, especially the finding of the Tribunal that there is no direct evidence against the respondents to obtain appointment by bogus casual service merely because the respondents were beneficiary and as the presumptions have been drawn by the petitioner without any basis, the findings of the Tribunal cannot be held to be suffering from any illegality or irregularity or such perversity which will require correction by this Court. The Tribunal's observation that Rule 27 of the Railway Rules has been violated as no reasons have been disclosed while passing the order by the revisional authority also cannot be faulted in the facts and circumstances. In the circumstances, the decision of the Tribunal to set aside the punishment of compulsory retirement imposed upon the respondents cannot be

faulted nor the decision of the Tribunal can be held to be vitiated on any of the grounds raised by the petitioner.

15. The learned counsel for the petitioner has also contended that even if the decision of the Tribunal in setting aside the punishment order is justifiable, while permitting the petitioner to take up the enquiry proceeding from the stage of initiation of enquiry by appointing an officer other than from the vigilance department and thus permitting a fresh enquiry by the petitioner, could not grant consequential benefits to the respondents as the same will be contrary to the ratio of the decision of the Supreme Court in U.P.State Textile Corpn. (Supra). It is contended that whether the respondents are entitled for consequential benefits or not is to be determined in the fresh enquiry which the petitioner has been allowed to conduct.

16. The learned counsel for the respondent does not dispute the ratio of the Supreme Court in case of U.P.State Textile Corpn. and contends that whether the respondent shall be entitled for all the consequential benefits till the date of setting aside the punishment order by the Tribunal by its order dated 18th September, 2009 be decided during the enquiry to be initiated by the petitioner by appointing an enquiry officer other than from the vigilance department. He however, contends that

since the proceedings are pending for a long period, the time be fixed for the petitioner to conclude the fresh enquiry. The learned counsel for the respondents also submitted that in view of the ratio of U.P.State Textile Corpn Ltd (Supra), the respondent shall be deemed to have been reinstated for the purpose of holding a fresh enquiry and shall be entitled for all the benefits of reinstatement.

17. Therefore, in the facts and circumstances and for the foregoing reasons the order of the Tribunal dated 18th September, 2009 impugned by the petitioner is sustained to the extent of setting aside the punishment imposed on the respondents of compulsorily retiring them. However, the decision of the Tribunal dated 18th September, 2009 granting consequential benefits till the date of the order of the Tribunal is set aside. The petitioner shall be entitled to take up the proceedings from the stage of initiation of enquiry by an enquiry officer other than the officer from the vigilance department in accordance with law and shall conclude the enquiry positively within six months considering the facts and circumstances of this case. The respondent shall be deemed to be reinstated from the date of the order of the Tribunal as a result of setting aside of earlier enquiry proceedings and on reinstatement from the date of the order of Tribunal they will also be entitled for benefits in accordance with law and rules and regulations. Considering the facts and circumstances it is clarified that the enquiry be concluded by the

petitioner within six months and this time shall not be extended. The question of grant of wages and all the consequential benefits till the date of the order of the Tribunal dated 18th September, 2009 quashing the earlier enquiry and punishment imposed shall also be decided in the fresh enquiry by the petitioner. With these directions, the writ petitions are disposed of. Parties are, however, left to bear their own cost.

ANIL KUMAR, J.

MAY 20, 2010

'rs'

MOOL CHAND GARG, J.