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

+ **W.P.(C) 5014/2014 and CM APPL. 10001/2014 (stay)**

**GENERAL MANAGER, NORTHERN RAILWAY AND
ORS.**

..... Petitioners

Through: Mr.Satpal Singh, Advocate.

versus

JAGAT RAM

..... Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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07.01.2020

1. The challenge in the present petition is to an order dated 19th January, 2014 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi, disposing of the Respondent's OA No.2834 of 2011 questioning an order dated 21st March, 2011 passed by the Disciplinary Authority ('DA') removing him from service as well as the order dated 13th April, 2011 passed by the Appellate Authority ('AA') affirming the removal by dismissing his appeal.

2. The Respondent was issued a memorandum dated 26th August, 2009 for holding a disciplinary enquiry under Rule 9 of the Railway Servants (Disciplinary) Appeal Rules, 1968 with one article of charge. The charge against the Respondent was that he had produced a false declaration of date of birth as 5th December, 1958 by way of an affidavit submitted to the

Petitioners on 25th April, 1989. The charge was that on verification from the school authorities it was seen that the Respondent's date of birth in the school record was noted as 5th March, 1944. It was further noted that he had earlier given an affidavit on 20th August, 1984 in which tampering was observed in the date of birth and in the name of his father. Accordingly, the charge was that the Respondent 'is responsible for producing false affidavit of his date of birth and father's name.'

3. It may be noted here that at the time of issuance of Show Cause Notice ('SCN') the Respondent was working as a Gateman. Along with charge the following Relied Upon Documents ('RUDs') were listed out:

"4. The list of documents by which the charges were proposed to be proved are the following:-

"RUD-1: Affidavit (Bayan-Halfya) of dated 25.4.89 (page -1)

RUD-2: Statement of Sh.Jagat Ram of dated 16.12.08 & dt.03.07.08(page-3)

RUD-3: Letter No. VIG/CT/2008/02/014 dt. 15.10.2008 (pages-2)

RUD-4: Reply received from school vide Dispatch No.01 dated 23.10.8 (Page-10)

RUD-5: Verification by Voter list of 2008 (Page2)

RUD-6: Statement of Sh. Jagat ,ram of dated 21-05-2009(page-1)

RUD-7: Statement of Sh. Nafhe Singh, VDLA (Page-1)

RUD-8: Affidavit of dated 20-10-84 (Page-2)."

4. The following two witnesses were cited for the prosecution viz.:

(i) Parbvinder Saini

(ii) Jasbir Singh

5. The Enquiry Officer ('EO') submitted a report holding the charge against the Respondent was proved. The DA accepted the report and passed the impugned order removing the Respondent from service.

6. In the impugned order the CAT has in para 16 observed that except the 2nd and 6th RUDs referred to hereinbefore 'all other documents are authored by someone other than the Applicant.' The CAT noted that none of the authors of the RUDs 1, 3, 4, 5 and 7 were as Prosecution Witnesses ('PWs'). The 2 PWs listed were vigilance staff who had undertaken the preliminary investigation. In the circumstances, the CAT came to the conclusion that the EO did not hold the enquiry in a judicious manner and that without any evidence on record he had held the charge to be proved. It was held that even the DA did not give due consideration to the enquiry report. The DA, without giving reasons, mechanically held the charge against the Respondent to be proved. The CAT in the impugned order in the operative portion directed as under:

“21. We, in the above facts and circumstances of the case, are of the view that the Respondents failed to adduce any evidence in support of the charge leveled against the Applicant. Therefore, we allow this OA. Consequently, the impugned Enquiry Officer's report dated 07.03.2011, the Disciplinary Authority's order dated 21.03.2011 and Appellate Authority's order dated 13.04.2011 cannot be sustained. Accordingly, they are quashed and set aside. Consequently, the Applicant shall be reinstated in service forthwith with all consequential benefits except full back wages. However, in the facts and circumstances of the case, he shall be paid 50% of emoluments till the date of his reinstatement. Further, we remit the case to the Disciplinary Authority to hold fresh proceedings in accordance with the prescribed after serving fresh charges upon

the Appellant with the list of relevant documents and witnesses. They may also adopt any scientific method to verify the age of the Applicant in the meanwhile. It is in their own interest that the enquiry is completed at the earliest.”

7. When the present petition was listed first before this Court on 11th August, 2014, while directing notice to the Respondent this Court stayed the operation of the impugned order of the CAT. It also restrained the CAT from proceeding in the contempt petition stated to have been filed by the Respondent.

8. The Respondent has not filed counter-affidavit pursuant to the notice issued in the present petition. In fact today even his counsel did not appear. Nevertheless, with the assistance of the learned counsel for the Petitioners this Court has examined the impugned order in light of the pleadings on record.

9. At the outset, it requires to be noticed that in view of the stay granted by this Court on the first date, the Respondent was not reinstated in service. As already noticed, even according to the Respondent, his date of birth was 5th December, 1958 and as on 4th December, 2018 he would have completed 60 years of age, the date of superannuation. With his not being capable of now being reinstated, that relief cannot be granted to the Respondent.

10. It appears to the Court that when the Respondent submitted his second affidavit on 25th April, 1989 declaring his date of birth as 5th December, 1958, the Petitioners did in fact accept that affidavit and made changes in his

service record. As a result, although in his service record his date of birth was noted as 5th March 1944, the Respondent did not retire on 4th March, 2002 on completion of 58 years (which was the age of superannuation at the relevant time). It appears that two decades after the Respondent submitted the second affidavit, the Petitioners came up with the charge of his having wrongly declared his date of birth to be 5th December, 1958.

11. In the disciplinary enquiry it was incumbent to the Petitioners to prove that the second affidavit submitted by the Respondent on 25th April, 1989 was false. It had to be further been shown that he had tampered the date of birth in the first affidavit submitted on 20th October, 1984. In order to prove this the Petitioners themselves had relied upon 8 documents of which two were the affidavits sworn to by the Respondent himself and which he stood by. In other words, he did not dispute the fact that he had on 25th April, 1989 submitted a second affidavit giving the changed date of birth. The question was whether this was believable.

12. As rightly pointed out by the CAT the Petitioners did not choose to prove 6 of the 8 documents by producing the authors of those documents. Instead 2 members of the vigilance staff were examined as PWs. Obviously the said PWs could not have vouched for the authenticity of the 6 RUDs. They were neither in control of the records from where those RUDs were extracted/prepared nor were they authors thereof. Therefore, the Court is unable to find any error having been committed by the CAT in the impugned order setting aside the enquiry proceedings and the consequential removal order.

13. The CAT in the considered view of the Court did the right thing in placing the matter again before the DA for conducting a proper enquiry and in determining the age of the Respondent by some scientific method. This was a balanced approach by the CAT since it did not cause any prejudice to the Petitioners. They were given the liberty of commencing the enquiry proceedings against the Respondent afresh.

14. In that view of the matter, the Court is of the view that no interference is called for with the impugned order only except to note that the portion of the order which requires the Respondent to be reinstated has worked itself out and is no longer capable of implementation.

15. The interim order passed by this Court stands vacated. The Petitioners will, in compliance with the impugned order of the CAT to the extent it requires the Respondent to be given the consequential benefits upon reinstatement including payment of 50% of wages for the period from the date of his removal till the date of his superannuation, pass appropriate orders and make such payment within a period of 8 weeks from today. The petition is disposed of in the above terms. Pending application also stand disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 07, 2020 / tr