

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

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- 1) OA No.2668/2002
with
- 2) OA No.2669/2002
- 3) OA No.2670/2002

New Delhi this the 18th day of November, 2004

Hon'ble Mr. S.K. Malhotra, Member (A)

1)OA 2668/2002

Shri Naveen Kumar Singh,
S/o Shri Devnandan Singh,
Khallasi, Northern Railway
Under Chief Signal Inspector (D-II),
Saharanpur, Working at Railway Station,
Kherkara.

...Applicant.

2)OA 2669/2002

Shri Deen Bandhu Singh,
S/o Shri Samar Dhir Singh,
Khallasi, Northern Railway
Under Chief Signal Inspector
P.S. Power Cabin, Northern Railway,
New Delhi
Working at Railway Station
Samalkha Rly Stn.

...Applicant.

3)OA 2670/2002

Shri Rishikesh Kumar Singh,
S/o Shri Siya Ram Singh,
Khallasi, Northern Railway
Under Chief Signal Inspector,
Motiya Bagh (West),
New Delhi.
Working at Railway Station,
Samalkha Rly Stn.

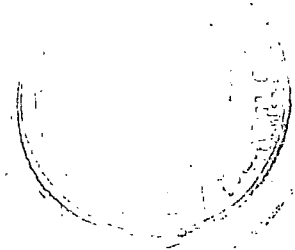
...Applicant.

(By Advocate Shri B.S. Mainee in all the OAs)

Versus

UNION OF INDIA : THROUGH

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- (27)
1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
 2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
 3. The Divisional Signal and Telecommunications
Engineer (Signal)
Northern Railway,
D.R.M. Office,
New Delhi.

...Respondents.

(By Advocate Shri Rajeev Bansal, Shri Rajinder Khatter and Shri D.S. Jagotra)

O R D E R

As the controversy involved in all the three OAs is the same, these are being disposed of by one common order. For the sake of convenience, the particulars given in OA No.2668/2002 are being mentioned in this order.

2. The applicant in this OA has approached the Tribunal with the prayer to restrain the respondents from terminating his services till the final disposal of OA or till the finalisation of criminal case filed against him.

3. The facts of the case, in brief, are that the applicant was initially appointed as Khallasi in Western Railway and was posted at Kota vide letter dated 2.12.96 (Annexure-A1). He submitted an application for transfer from Western Railway to Northern Railway on 31.10.97 due to his family circumstances. He was transferred to Northern Railway and was relieved vide order dated 20.5.98 (Annexure-A2). He reported for duty in the Office of DRM, New Delhi on 21.5.98 and was posted at Railway Station Rohana Kalan vide order dated 2.6.98 (Annexure-A3) from where he was transferred to Khekhra. He, however, received a notice on 21.6.2002 from Delhi, Special Police Establishment (SPE) in terms of

which he was directed to appear before the SPE, CBI, Jaipur on 27.6.2002 (Annexure-A5). He appeared before the Inspector of Police, SPE, CBI and was charged for the offences under Sections 120B, 420, 407, 468, 471 IPC; and under the provision of Prevention of Corruption Act, he was arrested on the same day. His bail application was rejected by the District Court but later, the Hon'ble High Court granted him bail. The respondents department in the meantime placed him under suspension vide order dated 4.7.2002 (Annexure-A7). It has been stated that no final decision has yet been taken in the criminal case filed by the CBI against him. However, the respondents have taken a decision to terminate his services alleging that the applicant had secured appointment fraudulently by producing a false appointment letter. He has, however, not received any termination order so far. According to him, such a decision by the respondents is arbitrary and unconstitutional. It is contended that in similar circumstances, three Khallasis whose services had been terminated on the allegation that they had secured appointment fraudulently, had filed an OA (No.135/94) in this Tribunal, the Tribunal had quashed the impugned verbal termination order which had been passed without holding any disciplinary enquiry. The Hon'ble Delhi High Court had also dismissed the writ petition of the respondents in that case. It has been claimed that he was appointed as a regular Khallasi and his services could not have been terminated without holding an enquiry and giving him an opportunity of hearing and following the principles of natural justice.

4. The respondents have filed a counter reply in which they have taken a stand that the CBI who had investigated the matter have come to the conclusion that the applicant has obtained the appointment and later on the transfer order based on forged documents. During investigation, it has also been proved that the

29 applicant never remained posted at Kota before he was transferred to Northern Railway New Delhi. Thus, the applicant cannot claim himself to be a Railway employee as the appointment was itself secured based on a forged and fabricated document. The investigation also reveals that his request for transfer was forwarded with a forged letter and the relieving order is also false and fraudulently prepared. On the basis of enquiry report filed by the CBI, the applicant was arrested and remained behind the bars and as per the Railway Servants (D & AR) Rules, he was deemed to have been placed under suspension with effect from the date of detention. The applicant was, therefore, suspended on 4.7.2002 (Annexure-A7). They are not aware of the status of criminal case pending against him. As the applicant is not being treated as a Railway employee as he had obtained the appointment/transfer based on fictitious orders, there is no need to initiate any disciplinary action under the Railway Servants (D & AR) Rules. The procedure for conducting enquiry is required to be followed only in case of a Railway employee only. The services of the applicant were accordingly terminated vide letter dated 6.9.2002.

5. The main point raised by the learned counsel for the applicant was whether the services of a permanent Govt. employee could be terminated without any enquiry and without giving him an opportunity to explain his position. According to him, the applicant in this case was a permanent employee of the Railways, whose services were transferred from Western Railway to Northern Railway on his request. He worked in Northern Railways from 1998 onwards. He was issued a notice in June, 2002 by the CBI, who had filed a FIR against him, based on which he was arrested and thereafter granted bail. The charge against him is that he got the employment based on forged documents and then got himself

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transferred to Northern Railway by a forged transfer order. The criminal case filed against him is still going on in the Court and no final decision has been taken. Since he was jailed, he was suspended by the respondent Department and thereafter his services have been terminated w.e.f. 6.9.2002 by a verbal order. No termination order has been issued to him so far. According to him, his services could not have been terminated without an enquiry and the applicant should have been issued a show cause notice and due opportunity was required to be given to defend himself in accordance with law. The learned counsel cited several judgments in support of his contention viz. **ATJ 1999 (2) SC 190 in the case of Radhey Shyam Gupta Vs. UP State Agro Industries Corporation**; **ATJ 2000 (1) 453 in the case of Smt. Sunita Sharma Vs. UOI and others**; **ATJ 2004 (2) 315 in the case of Ravi Parkash Shivhare Vs. UOI and others** and **SCJ 2002 (1) 242 UOI & others Vs. Lt. Genl. M.S. Sandhu**. It has been held in these judgments that where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature, are arrived at behind the back of officer and where on the basis of such a report the termination order is issued, such an order will be violative of principles of natural justice. Further, termination without a show cause notice is in violation of natural justice. In the case of **Ravi Parkash Shivhare (supra)**, when the employee was removed from service on the charge of producing false certificate for securing appointment, the Tribunal had quashed the order of termination as the employee was denied the reasonable opportunity of defend himself. In the case of **Lt. Genl. M.S. Sandhu (supra)**, the Hon'ble Delhi High Court held that a mere FIR is no conviction. The learned counsel for the applicant stated that the present case is fully covered by these judgments. In the instant case, the allegation against the applicant that he

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(31) secured employment on forged documents has not yet been proved. CBI have merely filed an FIR, based on which the services of the applicant cannot be terminated.

6. The learned counsel for the respondents vehemently opposed the above contentions of the learned counsel of the applicant. His stand was that the applicant cannot be called a Govt. employee, as he secured the employment by fraud and consequently the provisions of Railway Servants (D &AR) Rules are not applicable in his case and as such no departmental enquiry was necessary for terminating his services. He drew my attention to the report submitted by the CBI, based on the detailed investigations made by them. According to this report, the applicants in these three OAs had entered into a criminal conspiracy with one Shri M.M.Gupta, Senior Clerk, working in Engineering Department in Western Railway at Kota during 1998, to cheat the Railways by dishonestly and fraudulently procuring employment for these three applicants as Khalasis. The investigation revealed that the applicant was neither appointed nor he ever remained posted in Kota Division. Shri M.M. Gupta had prepared fictitious and forged transfer letter for the transfer of the applicant to Northern Railway. These transfer letters were accepted by the Northern Railway on the belief that these were genuine ones. All the three applicants have thus been continuing in Railways. The CBI started its investigation on a source report to the effect that these applicants had secured employment based on fictitious and forged transfer orders. The applicant during investigation had also admitted that he had bribed Shri Gupta for securing the employment.

7. The learned counsel for the respondents placed reliance on a number of judgments in which it has been held that in such a case where the appointment is

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procured based on fictitious certificate, it is ab initio void and can be terminated without any show cause notice. One such judgment is reported as **2004(2) SLJ Vol.2 page 1 in the case of R. Vishwanatha Pillai Vs. State of Kerala & sothers** in which case, the S.C. certificate produced by him for securing appointment was found to be false and his services were terminated. It was pleaded that the provisions of Article 311 of the Constitution were not followed. It was held that the benefit accrues to a person who holds civil post but the appellant had been appointed by fraud and his appointment was void ab initio. In another case of **Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education and others ((2003)8 SCC 311)**, the Hon'ble Supreme Court held that "once the fraud is proved, it deprives the person of all advantages or benefits obtained thereby- delay in detection of or in taking action will raise no equities-equity-fraud-relief on equitable grounds misplaced." It was further held that in cases of mass copying principles of natural justice need not be strictly complied with. In yet another case of **Virendra Pal Singh Vs. UOI and another 1/2003 Swainynews 43 (Jodhpur) in OA No.204 of 2000 and others**, it was held that "The principle is well established by the Apex Court that appointments made dehors the rules, have no validity. Those who come by back door have to return by the same back door and cannot claim the protection of the principles of natural justice and cannot challenge the cancellation of their appointment order on the ground that they were not given any show cause notice. Such appointments in fact can be terminated at the option of the employer by letter simpliciter, as held by the Apex Court in **UOI Vs. M.S.Bhaskaran (1995 (Suppl) 4 SCC 100)**."

8. -- The learned counsel for the respondents also cited judgment of the Hon'ble Supreme Court **(2003)8 Supreme Court Cases 319 in the case of Ram**

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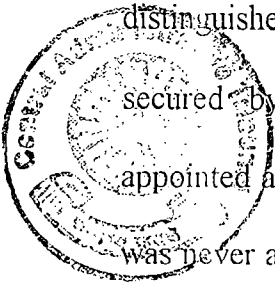
33 **Chandra Singh Vs. Savitri Devi and others**, in which it was held that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.

9. The learned counsel for the applicants, however, countered the above arguments by stating that in all these cases the allegation of fraud had been proved but it is not so in the instant case. The case is yet to be finally decided by the Court. The services of the applicants cannot be terminated merely based on a FIR filed by the CBI, without following the principles of natural justice.

10. From the facts and circumstances of the case and taking into consideration the detailed report of the CBI, it is evident that the applicant had secured employment and thereafter arranged his transfer to Northern Railways through forged and fabricated documents. The applicant during his interrogation by the CBI had confessed that for this purpose, he had bribed Shri M.M.Gupta. A conspiracy was hatched by the applicants in connivance with Shri Gupta to play a fraud on Railway in which they succeeded to a great extent. It was only a source report, the investigation of which revealed the truth. A criminal case has been filed by the CBI against Shri Gupta also. It is interesting to note that the applicant neither in the OA nor the learned counsel for the applicant during the course of arguments made any statement to the effect that the applicant had been appointed after due process of selection. Had he been appointed after proper procedure of selection, he would have certainly brought the relevant facts to the notice of the Tribunal. Here was an opportunity afforded to him by the Tribunal, if not by the respondent Department, to explain his position. The very fact that the applicant has remained silent on this aspect of the matter and his counsel also did not raise

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this point at all, is adequate proof that the applicant had not entered the Govt. service through honest and valid means. Even if an opportunity was given to him by the respondent Department to explain his conduct, the result would not have been different. It is also intriguing to note that the appointment letter dated 2.12.1996(Annexure-A1) stated to have been issued to the applicant mentions that he has been appointed as Khalasi on permanent basis. No employee is appointed on permanent basis from day one. Even those who are selected through UPSC and other such bodies against permanent posts, are normally issued appointment letters with the condition that they will be confirmed only after successful completion of probation period of one/two years. But in this case, the applicant is stated to have been appointed on permanent basis to the post of Khalasi from the day the appointment letter was issued to him. This is another indicator that this letter is forged. As mentioned above, the learned counsel for the applicant did not even once make a suggestion that the applicant had joined the Railways through the process of selection. He could not do it for obvious reasons, as the so called appointment and transfer letters were forged ones. The only point emphasized by him was that the applicant could not have been removed without enquiry and an opportunity having been given to him to explain his position. The judgments cited by the learned counsel for the applicant in support of his contention can be distinguished to the extent that in those cases, although the appointments were secured by producing non-genuine certificates but the applicants had been appointed after following the due procedure of selection. In this case, the applicant was never appointed at all or worked in Kota division even after the issuance of the so called appointment letter dated 2.12.96 (Annexure A-1). The appointment letter itself was forged. Thereafter, he procured forged letter of transfer, based on which



he joined in Northern Railway. The detailed investigation made by CBI and the

35 facts and circumstances explained above, hardly leave any doubt that the applicant got into the service by playing a fraud on the Railways. The question of equity and principles of natural justice raised are relevant only if the applicant had entered Govt. service through valid process of selection and appointment. His appointment and transfer secured by a fraud was void ab initio and as such he had no legal right to ask for a departmental enquiry and any opportunity to be given to explain his conduct before terminating his services. The CBI had afforded him an opportunity at the time of investigation where he had conceded that he had bribed Shri Gupta to secure the employment. In such a case, there was no need for further enquiry and giving him another opportunity to explain his position, as held by the Hon'ble Supreme Court in the case of **R. Vishwanatha Pillai and Ram Preeti Yadav (Supra)**. The principles of equity and equitable doctrine cannot be applicable in the case of a fraud. In fact, as stated by the respondents, the applicant cannot be legally called a Railway employee, as he got into the service through forged letters. In such a situation, he is not entitled to any relief whatsoever which is available to a Govt. employee. As observed in the judgment of **Vijendra Pal Singh (supra)** "those who come by the back door, have to return by the same back door and cannot claim the protection of the principles of natural justice." In fact in such a case, it is not enough to terminate the services of such employees, but the salary and allowances received by them through fraudulent means should be recovered and they should be appropriately dealt with according to law, so that such tendencies on the part of Govt. employees are curbed. Hopefully, these aspects of the matter will be considered by the appropriate Court, in accordance with law, in the criminal case going against the applicant and others.

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11. As a result of the above discussion, I do not find any merit in the OAs filed by the applicants which deserve to be dismissed. All the three OAs mentioned above are accordingly dismissed, without any order as to costs.

(S.K. Malhotra)
Member (A)

New Delhi
18-11-2004

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