

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1328/2001

New Delhi, this the 11th day of March, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

Shri Laxman Prasad
S/o Shri Ram Gopal
Ex.Luggage Porter
Under Station Superintendent
Northern Railway, Narwana.

R/o R-154, Railway Enclave
Sector-12, Ghaziabad.

...Applicant

(By Advocate Shri B.S.Mainee)

V E R S U S

UNION OF INDIA : THROUGH

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.
3. The Station Superintendent
Northern Railway
Narwana.

...Respondents

(By Advocate Shri D.S.Jagotra)

O R D E R

By Hon'ble Shri Govindan S.Tampi,

Reinstatement of the applicant in service with full consequential benefits including the back wages is claimed in this OA.

2. Heard S/Shri B.S.Mainee and D.S.Jagotra, learned counsel for the applicant and the respondents in this OA respectively.
3. Stated in brief the facts are that the applicant Laxman Prasad was appointed as Luggage Porter in Northern Railway at Narwana Railway Station, where he worked from 2-11-1992 to 11-12-1992. Shortly thereafter the applicant along with three others -

Om Prakash, Om Dutt and Umesh Kumar, were proceeded against on the basis of a FIR that they had secured appointment on the strength of forged appointment orders. All of them were arrested and bailed out thereafter. Still they were not permitted to rejoin duties. After their discharge by the Court of Law, Om Prakash, Om Dutt and Umesh Kumar, came up in OA 55/94, 663/94 and 135/94 which were allowed with the directions to the respondents to reinstate them with all benefits including back wages. The applicant was discharged by the Sub-Divisional Judicial Magistrate, Narwana on 16-1-2001. Though the applicant furnished a copy of the said judgement to the respondents on 27-1-2001 with request for doing the needful. But nothing has been done, leading to the institution of this OA.

4. During the oral submissions before me Shri B.S.Mainee appearing for the applicant has argued that as the applicant has been acquitted of the charge against him, there was no ground to deny him reinstatement with all benefits, which have been granted to his three colleagues based at Delhi, who were also identically placed.
5. In the reply filed on behalf of the respondents and argued before me Shri D.S.Jagotra, their learned counsel, the claim of the applicant is disputed. As the concerned individual had secured employment on false premises and false appointment letter, his case did not merit any consideration. His acquittal by the Sub-Divisional Judicial Magistrate was only granting him the benefit of doubt. Respondents agree that the three others i.e. Om

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Prakash, Om Dutt and Umesh Kumar who were also similarly placed have been reinstated but have not been paid any back wages as in one case, stay has been obtained from the Delhi High Court on the payment of the same. Shri Jagotra further points out that the applicant has no right for reinstatement in service - that too with back wages - unless he proves to the satisfaction of the administration that he had obtained appointment only on the basis of a correct appointment letter. Shri Jagotra, subsequently filed an additional affidavit on 7-2-2002 admitting that Om Prakash, Om Dutt and Umesh Kumar have been given back wages on reinstatement, but sought to distinguish the applicant's case from their's by stating that in the instant case, a false appointment letter was made use for getting the appointment. That being the case. The appointment was secured malafide and, therefore, it is squarely covered by the decision of the Hon'ble Supreme Court in the case of UOI Vs. M.Bhaskar & Ors. (AIR 1996 SC 686), which held that "fraudulently obtained appointment orders would be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases, merely because the employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders, cannot create equity in their favour or any estoppel against the employer". The OA, therefore, deserved to be dismissed, according to Shri Jagotra.

6. I have very carefully considered the matter. The applicant in this case is seeking his reinstatement

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in service with full consequential benefits including backwages, as has been granted to three others who are identically placed and who have been granted the benefit at the intervention of this Tribunal. The respondents, on the other hand, seek to deny the same stating that the circumstances in the instant case was different. On examining the position with specific reference to the facts of the case as brought out on record, I am convinced that the applicant has a convincing case. Proceedings were initiated against the applicant Laxman Prasad posted at Narwana along with Om Prakash, Om Dutt and Umesh Kumar, posted at Delhi on the ground that all of them had secured the appointment as Luggage Porter by means of false documents and false appointment letter. Following the discharge of Om Prakash, Om Dutt and Umesh Kumar, they were reinstated in service with benefit of full backwages, on the basis of the decisions of the Tribunal dated 29-11-1995 in OA 59/1994, dated 18-4-1995 in OA 663/1994 and dated 2-12-1997 in OA 135/1994 respectively. The applicant was also discharged by the order of a Sub-Divisional Judicial Magistrate, Narwana on 16-1-2001 stating that the prosecution had failed to prove the charge against the accused and that there was no incriminatory evidence against him. Still, the respondents are denying the reinstatement of the applicant stating that he had not proved satisfactorily that nothing irregular was committed by him and that his acquittal had been only on benefit of doubt. This averment of the respondents is quite surprising in the facts of the case. All

the four individuals have been proceeded against simultaneously for the same offence of procuring appointment by false means, all of them had been discharged in the Court of Law, but while three have been given the relief by way of reinstatement in service with full consequential benefits including back wages, the applicant in this OA alone is denied the relief which rightly belongs to him. The distinction sought to be made by the respondents between the case of the applicant and those of the other three, namely, Om Prakash, Om Dutt and Umesh Kumar does not have any basis and is artificial. The reliance placed by the respondents' counsel in the decision of the Hon'ble Apex Court in the case of Union of India Vs. M. Bhaskar & Ors. (supra) does not come to the assistance at all, as in this case, it has been established in the Court of Law that the applicant cannot be held guilty for procuring the appointment by false means. Interestingly, no appeal is found to have been filed against the applicant's acquittal by the Sub-Divisional Judicial Magistrate, Narwana and the said order has become final. Consequences arising from the said judgement have to follow suit. The applicant, therefore, has to be given the benefit extended to his three colleagues i.e. Om Prakash, Om Dutt and Umesh Kumar, in identical circumstances. Justice would be rendered only then.

7. In the above view of the matter, the application succeeds and is accordingly disposed of. The respondents are directed to reinstate the applicant in service with full consequential benefits

including back wages for the period from his date of disengagement in 1992 to the date of his reinstatement. This exercise shall be completed at the earliest and in any event within two months from the date of receipt of a copy of this order.

No costs.

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(GOVINDAN S. TAMPI)
MEMBER (A)