

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No. 930/97

New Delhi this the 20<sup>th</sup> day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri V.K. Majotra, Member (A)

Shri Prithvi Raj  
S/o Shri Rishi Pal Singh  
H. No. 1-53, Dakshan Puri,  
New Delhi.

-Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India : Through

1. The General Manager  
Northern Railway  
Baroda House  
New Delhi.
2. The Divisional Railway Manager  
Northern Railway  
Moradabad.

-Respondents

(By Advocate: Shri B.S. Jain)

ORDER (Oral)

By Shri V.K. Majotra, Member (A)

The applicant has assailed the following  
orders:-

i) Order No. 727-E/D&AR/91-210/LRJ-93-53  
dated 14.10.96 (Annexure A-1) whereby the  
applicant has been removed from service  
with immediate effect.

ii) Order No. 727-E/D&AR/93-210/LRJ-53  
dated 26.11.96, whereby applicant's appeal  
against punishment of removal from service  
has been rejected.

2. The applicant was appointed as Substitute  
Loco Cleaner on the basis of a certificate regarding  
having worked as casual labour in Moradabad earlier  
and another School Leaving Certificate regarding his  
date of birth. The applicant was issued a charge  
sheet dated 27.3.1991 for major penalty alleging that

he had submitted a fake and ~~tempered~~ school certificate in support of his educational qualification and date of birth; and that though he had worked only for 104 days <sup>he has</sup> ~~but~~ managed to get employment with the connivance of Railway staff. In this manner he had secured employment in the Railways fraudulently. The applicant has alleged that no enquiry was conducted against him nor was any witness or documents examined by the Enquiry Committee/Disciplinary Authority and that the applicant was not accorded any reasonable opportunity of defence. His earlier application being OA No. 150/94 was allowed vide order dated 18.8.1994 and orders of the disciplinary and appellate authorities were quashed and the respondents were given liberty to proceed with the disciplinary proceedings in accordance with law. Thereafter the applicant was reinstated in service vide notice dated 15.12.1994. He was placed under suspension on 19.12.94 and a fresh enquiry was held against him. According to the applicant, he was not supplied the necessary documents and his defence witness was not examined. The applicant has alleged the enquiry report as perverse and contended that the Enquiry Officer had contacted the Principal of the Nehru Smarak Ucchar Madhyamic Vidhyalaya, Jaithra and recorded his statement in the absence of the applicant, which is illegal. The applicant has sought quashing of the impugned orders and direction to the respondents to reinstate him with all consequential benefits.

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3. The respondents have taken a preliminary objection that the applicant has not given any address of his residence in Delhi and thus Principal Bench does not have any territorial jurisdiction in the matter. It may be stated at the outset that later on in the memo of parties as well as in the verification, the applicant has given Delhi address, which has not been contradicted by the respondents in their counter. Thus, objection relating to territorial jurisdiction is rejected.

4. The respondents have contended that the applicant had secured employment by fraudulent means on production of fake and tampered school certificate and also that he was not eligible having rendered only 104 days of service as against the requirement of 120 days. According to the respondents, the required conditions for appointment of the applicant as Loco Cleaner were as under:-

- 1) The applicant should have attained maximum age of 28 years as on 31.10.1987.
- 2) The applicant should have passed 8th class.
- 3) The applicant should have worked for 120 days.
- 4) The name of the applicant must have been in the live casual labour register.

5. The respondents have averred that the applicant did not fulfil the requisite conditions as he had worked only for 104 days instead of 120 days; his name was not in the casual labour register and he had submitted a fake School Leaving Certificate.

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✓ According to the respondents, the applicant had secured his employment in connivance with the concerned staff who were involved in the scandal and were charge-sheeted for major penalty separately. The Enquiry Officer had recorded the statement of the Principal (Annexure-R-1) who had verified the School Leaving Certificate No. 2283 submitted by the applicant as fake.

6. We have heard learned counsel of the parties and perused the material available on record as well as the original records produced by the respondents before us.

7. The main issue~~s~~ raised by the learned counsel of the applicant Shri B.S. Mainee <sup>is</sup> ~~are~~ <sup>h</sup> that the respondents have appointed the applicant in full knowledge of the fact that he had worked for 104 days only and not 120 days. According to him, there are no instructions of the Railway Board that a casual labour must have worked for 120 days before being employed on a regular basis. This requirement had been prescribed as per local instructions in Moradabad Division and even so the requirement of having worked for 120 days was not strictly followed and relaxation was freely accorded by the railway authority. Secondly, Shri Mainee has contended that Annexure R-1 has been obtained by the Enquiry Officer behind the applicant's back and no opportunity was afforded to the applicant to explain that Annexure R-1 issued by the Principal of Nehru Smarak Ucchar Madhyamic Vidhayalaya, Jaittra was incorrect. Later

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Shri Mainee contended that the signatures of the applicant on Annexure R-1 are forged and are not that of the applicant. On Shri Mainee's insistence, we have gone through the record produced by the learned counsel for respondents Shri B.S. Jain.

8. Shri Jain, on behalf of respondents, has contended that the applicant had produced a fake certificate. The statement of the Principal was taken in the presence of the applicant who has stated that the certificate produced by the applicant at the time of seeking employment was fake. Actually, the certificate issued at Sr. No. 2283 was favouring one Shri Omvir Singh S/o Shri Harish Chandra and not the applicant. The signature of the Headmaster on the School leaving certificate at Sr. No. 2283 was also bogus. Whereas in the original certificate no date of birth has been shown. The applicant in his fake copy has shown his date of birth as 30.12.1958. The Headmaster has also certified that the particulars described in the fake certificate did not tally with the original School leaving certificate.

9. Shri Jain has drawn our attention to Union of India & Others Vs. M. Bhaskaran 1996 (32) ATC 94 wherein persons procuring employment as workmen in railway on the basis of bogus and forged casual labour service cards were held guilty of misrepresentation and fraud. The removal of such workmen after establishing the unauthenticity of the service cards and affording opportunity in departmental enquiries, was held to be valid. It was

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also held that mere long continuance of such employment could not create any equity in favour of the workmen or any estoppel against the employer.

10. On verification of the enquiry report, we find that the Principal had issued Annexure R-1 dated 1.3.96 verifying that it was not a true copy of the School leaving certificate issued at Sr. No. 2283. The Sr. No. 2283 was issued in favour of one Shri Omvir Singh S/o Shri Harish Chandra and not the applicant. The applicant had appended his signature on R-1 on the same date i.e. 1.3.96 in the presence of Enquiry Officer and the Principal. In the circumstances, the contention of the applicant that he had submitted a correct School leaving certificate is found unacceptable. The copy that he had furnished was certainly fake and not genuine.


11. Whereas in this OA, the applicant is stated to have worked for 117 days between 2.1.77 and 27.12.82. In the rejoinder, the applicant had contended that he had worked for 120 days. During the arguments, the learned counsel of the applicant stated that the applicant had worked for 104 days and in full knowledge of this fact, he had been given employment. Certainly when the applicant had secured his employment on the basis of his fake School leaving certificate and while he did not fulfil the requisite condition of having worked of 120 days, it can be concluded without doubt that the applicant had been guilty of misrepresentation and fraud. He

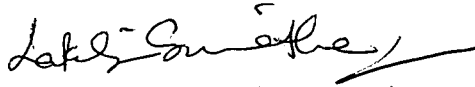
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cannot, therefore, get any benefit of his employment secured through such means. We are also satisfied that the enquiry has been held in accordance with the relevant rules and procedures wherein he had been afforded reasonable opportunity of defence.

12. The ratio of Union of India and Others Vs. M. Bhaskaran(supra) is certainly applicable to the facts and circumstances of the instant case. Having regard to what has been stated above, we do not find any merit in the OA. The same is accordingly dismissed. No costs.

  
(V.K. Majotra)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)

cc.