

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 135 of 1994

New Delhi this the 2nd of December, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri Umesh Kumar
S/o Shri Satyadev
R/o Village Pharauli,
P.O. Daryapur,
District Aligarh.

..Applicant

By Advocate Shri B.S. Mainee.

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Chief Electrical Foreman (Shatabdi),
Northern Railway,
D.R.M. Office,
State Entry Road,
New Delhi. Respondents

By Advocate Shri O.P. Kshatriya.

ORDER (ORAL)

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant is stated to have been appointed as Air Condition Khalasi in Group-D by the order of the respondents dated 24.7.1991, Annexure A-2. It is stated in the aforesaid order that after taking over the above applicant, the person who was engaged till regular appointment, would not be retained in service under any circumstances. Applicant on the basis of the aforesaid order, reported for duty on 27.7.1991. Thereafter, he

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served in the aforesaid capacity till 17.10.1992. Thereafter a common FIR was filed against three persons including the applicant alleging that they have secured the aforesaid appointment by fraud and forgery of the appointment letters. After the filing of the FIR, the respondents did not allow the applicant to perform the duty when he reported on 15.2.1993. Against this act of the respondents, this applicant has been filed.

2. It is stated by the applicant that he availed himself of leave from 18.10.1992 which is denied by the respondents. They have averred that the applicant had remained on unauthorised absent from duty. The other two persons involved in the FIR had filed separate applications in this Tribunal - O.A. No. 663 of 1994 Om Dutt Vs. U.O.I and O.A. 59 of 1994 Om Prakash Vs. U.O.I. The O.A. No. 663 of 1994 was disposed of by this Tribunal by their order dated 18.4.1995 reported in 1995(2) ATJ page 24. The aforesaid applications were allowed and the respondents were directed to reinstate the applicant in service and to pay him full wages for the period he was kept out of duty. It was also made clear in the aforesaid order that this order would not preclude the respondents from taking action against that applicant if they deemed it necessary in accordance with law after giving the applicant a reasonable opportunity to defend himself. Following the aforesaid judgment, another Division Bench of this Tribunal also disposed of O.A. No. 59 of 1994 by their order dated 29.11.1995 allowing the same relief as in the earlier O.A.



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3. When the present O.A. came up for hearing on 26.7.1997, respondents were directed to file additional affidavit regarding instructions with regard to the implementation of the judgments in the aforesaid O.As. 663 of 1994 and 59 of 1994. Accordingly, the respondents have filed the additional affidavit vide 11.8.1997 and it is stated therein that in compliance of the judgments in O.A. Nos. 663 of 1994 and 59 of 1994, the applicants therein had been taken on duty and they were also paid the back wages amounting to Rs.76,269/- in the case of Om Dutt applicant in O.A. No. 663 of 1994 and Rs.86,923/- in the case of Om Prakash applicant in O.A. No. 59 of 1994. It is, however, stated in the aforesaid affidavit that action has also been initiated under the Discipline & Appeal Rules against these persons.

4. The learned counsel for the applicant submits that the present application was also filed along with the aforesaid O.As. but those cases happened to be decided earlier and the facts and circumstances of the case are entirely parimateria with those cases and, therefore, the applicant in the present case is also entitled to the same relief as given in those two OAs.

5. The learned counsel for the respondents submits that the relief sought by the applicant cannot be granted to him in view of the serious offence committed by him and he had procured the appointment by fraud on the basis of the forged documents. He cites reference to a case of



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Union of India & Others Vs. M. Bhaskaran, 1996 (1) SCS LJ
page 1 to underline the fact that the Courts cannot interfere and allow such prayers as that would amount to giving a premium on dishonesty and sharp practice. We have seen this case. In this case, the removal of service of the petitioner was ordered after following due process of law and in due compliance with the principles of natural justice and, therefore, the Apex Court held that there was no infirmity in the impugned order of removal and, therefore, the appeal in the aforesaid case was allowed. In the present case, however, as well as in the cases covered by the aforesaid judgments in O.A. Nos. 663 of 1994 and 59 of 1994, it is an admitted position that no enquiry under the Discipline and Appeal Rules or any statutory rule have been held before the respondents took action not to entertain the applicant in service. The learned counsel for the respondents also concedes that there had actually been no order of either termination from service or dismissal from service. There is also no order to the effect of treating the absence as unauthorised and recalling the applicant from duty. On the other hand, merely on the basis of the FIR filed in the case, the applicant, appears to have been denied access to employment. The applicant has also not been served with any notice for any contemplated action departmentally following the filing of the FIR.

6. From the affidavit filed now, it is seen that

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only after the reinstatement of the applicants in those two O.As., the respondents have contemplated to take action under the Discipline & Appeal Rules. The learned counsel for the respondents also states that in the present case, the respondents are free to take any action under the Discipline & Appeal Rules, if he is ordered to be reinstated. He further submitted that in a similar matter of reinstatement in another case - O.A. No. 634 of 1997 Raj Kumar Vs. U.O.I. decided on 7.10.1997, Hon'ble Tribunal while allowing the petition had allowed only 50% of the back wages. The learned counsel also submitted that this could be taken into account in this case also.

7. We have considered this matter. The facts and circumstances of the case - O.A. 634 of 1997 are not before us and, therefore, it is not possible for us to go entirely by that order. It is also not known to us whether the facts and circumstances of that case are parimateria with this case. In the circumstances we are bound to go by the decision of the Tribunal in the cases of other two persons involved in the same FIR as that of applicant.

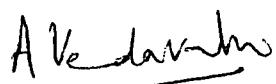
8. In the light of the above discussion, we allow this application on the same lines as was allowed in the above two OAs, namely, O.A. No. 663 of 1994 Om Dutt Vs. U.O.I. and O.A. No. 59 of 1994 Om Prakash Vs. U.O.I.

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and direct the respondents to reinstate the applicant in service within 2 months from the date of receipt of this order and pay him back wages for the period he was kept out of work. We also make it clear that this will not stand in the way of the respondents taking any disciplinary action against the applicant in accordance with law.

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There shall be no order as to costs.



(DR. A. VEDAVALLI)
MEMBER (J)



(K. MUTHUKUMAR)
MEMBER (A)

Rakesh