

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1246/90
MP No.3368/93

New Delhi this the 23rd Day of February 1995.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

Het Ram S/o Sh. Jag Ram
Lab. Assistant Diesel Shed,
Northern Railway,
Shakurbasti, Delhi.

...Applicant

(By Advocate Sh. B.B. Raval)

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 Metallurgist,
Locomotive Workshop,
Northern Railway, Charbagh,
Lucknow (UP)

...Respondents

(By Advocate Sh. B.K. Aggarwal)

ORDER

Hon'ble Mr. N.V. Krishnan:-

The applicant, who was promoted on ad hoc basis on 29.7.85 as a Laboratory Assistant in the Diesel Shed, Shakurbasti, Northern Railway, filed this application on 20.6.90. Paragraph 1 of the OA states that the application is made against the D.O. letter dated 23.2.89 (Annexure A-1) addressed by Sh. A.K. Malhotra of the Shakurbasti, Diesel Shed to Sh. P.K. Sharma, Divisional Personnel Officer in the office of the Divisional Railway Manager (DRM) Delhi, the second respondent. This D.O. letter proposed certain local arrangements to be made to fill up the vacancy of C.M.A. caused by the resignation of Ramesh Chandra, the then

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incumbent. Such local arrangements were asked to be made by the General Manager (Mechanical). In the chain of local arrangements, it was proposed that Sh. Bankey Lal, the seniormost Laboratory Assistant of the Shakurbasti Shed be put to officiate as Junior C.M.A. vice Sh. Madan Lal, proposed to be promoted on ad hoc basis as C.M.A. locally in the vacancy of Sh. Ramesh Chandra. It was complained in the OA, that, though the applicant had been promoted as Lab. Assistant on 29.7.85 on ad hoc basis, his non-regularisation has resulted in losing a chance for consideration for promotion to the post of J.C.M.A. on this occasion. The applicant, therefore, prayed for a direction to the respondents to regularise his ad hoc promotion on the post of Lab. Assistant from the date of such ad hoc promotion with all consequential benefits of further promotion, pay fixation and arrears.

2. The grounds on which this prayer is made are as follows:-

- i) Government does not have the right to continue the ad hoc appointment for a number of years. It is necessary to regularise such ad hoc appointees.
- ii) The applicant is a senior Lab. Khalasi which is the feeder category to the Lab. Assistant, and satisfies the eligibility conditions.

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iii) In other departments of the Railways such promotees have been regularised. Once an employee has worked for a long period and has not been reverted, he has to be regularised on the post, as held by the Supreme Court.

iv) The Annexure-A-13 letter dated 29.11.88, of the Deputy Chief Mechanical Engineer of the Diesel Shed, Shakurbasti to the Senior Divisional Personnel Officer in the D.R.M's office, New Delhi, materially supports this claim.

3. On 21.6.90, when the matter came up for admission, Sh. Umesh Mishra, the then learned counsel for the applicant showed a copy of a letter dated 14.6.90 issued by the Deputy Chief Mechanical Engineer (DCME) (Design), Shakurbasti which stated that the applicant, who has been working on ad hoc basis, may be reverted, as a general decision has been taken that no local ad hoc promotion should be made. Notice was directed to be issued to the respondents and, in the meantime, the respondents were directed, as an ad interim measure, not to revert the applicant till the hearing on 5.7.90. This order was to be served Dasti.

4. On 5.7.90 Sh. B.K. Aggarwal, appearing for the respondents, stated that there was no post of Lab. Assistant at Shakurbasti and that the post earlier held by the applicant had been transferred to the Ambala Division. He, therefore, prayed for the vacation of the interim order. This was contested by the learned counsel for the applicant who stated

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that the applicant had not yet been served with any order of reversion and that he was on leave. The respondents were, therefore, directed to file a reply. The earlier interim order was also modified and it was directed that the status quo of the applicant as on that day be maintained. Reply to the OA was filed on 1.8.90 denying the claims of the applicant. A rejoinder thereto was filed on 6.8.90.

5. On 21.8.90, the following order was passed regarding the interim direction:-

"We have been informed today by both the parties that the applicant is working neither on the post of Lab Assistant in an ad hoc capacity nor on his substantive post of Lab Khalasi. Learned counsel for the Respondents made a categorical statement at the bar that Shri Satya Prakash who was stated by the applicant to be junior to him and still officiating as Lab Assistant, is not working as a Lab Assistant. In view of this, we do not consider it necessary to continue the interim order already passed, any further. However, if the applicant, chooses to report for duty for his substantive post the respondents shall allow him to join duty and work thereon. Further, vide Divisional Office letter No.758-E/10/Part-5 (Annexure P-1 to the Rejoinder) dated 13.7.1990 by which the applicant, among others, was required to be relieved for taking the written test for the post of Lab Assistant scheduled to be held on 4.8.1990, yet in the letter dated 3.8.1990 (Annexure P-2), his name does not appear. The applicant's grievance is that he was not informed that he could appear in the test scheduled for 4.8.1990. If the applicant wishes to appear in the written test for the post of Lab Assistant the respondents shall permit him to take the test."

6. On 17.7.90, the applicant filed MP-1940/90 for a direction to the respondents to allow the applicant to resume duty as Lab. Assistant till the decision of the OA. As will be seen presently, orders thereon were not passed till 1993.

7. Thereafter, the applicant filed MP-2180/90 on 28.8.90, in which he claimed that, considering the strength of Lab. Assistants in the Shakurbasti Diesel Shed and the

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persons in position, a vacancy existed, which could be filled up by appointing him, particularly because he was a scheduled caste candidate (SC) and vacancy existed in the SC quota of this cadre. He also claimed that one K.K. Dutta, alleged to be his junior, was still working as Lab Assistant. It was, therefore, prayed that the respondents be directed to allow the applicant to resume duty as Lab. Assistant. The respondents filed a reply to this MP on 8.11.90. On 6.12.90 when MP-2180/90 was listed for directions, the respondents made certain submissions which were recorded as follows:-

"The respondents in the reply to the MP-2180/90 and in the oral submissions made before us have asserted that no person junior to the applicant cadre of Lab Khalasi is working as Lab Asstt. even on ad hoc basis and that there is no post of Lab Asstt. in Delhi Division vacant which may need to be filled up on ad hoc basis. The learned counsel for the applicant contests these assertions and prays for one week's time to file rejoinder. Time prayed for is allowed. List before the Bench on 17.12.90."

8. On 17.12.90, MP-2180/90 was disposed of as follows:-

"2. From what has been stated before us by the parties it appears that the applicant had already been reverted from the post of Lab. Assistant by orders passed on 14.6.1990. Thus, whether the applicant should be allowed to resume duty on the higher post of Lab. Assistant will depend on his entitlement to work on that higher post either on regular basis or on adhoc basis. This would amount to going into the issues which are relevant for the disposal of the OA.

3. We are therefore, of the considered view that the prayer in MP-2180/90 should not be allowed as an interim relief and M.P. is accordingly disposed of as such."

9. The applicant filed CCP-214/90 on 30.11.1990 alleging contempt against Sh. S.M. Vaish, General Manager, Northern Railway and others in respect of non-compliance of the interim order issued on 21.6.90. It was claimed that,

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contrary to the directions given by the Tribunal, the applicant was reverted to the post of Lab. Khalasi and thus there was disobedience of the orders of the Tribunal. That CCP was dismissed on 7.1.92.

10. The respondents filed their reply to MP-1940/90 only on 19.4.93. A lengthy rejoinder to this reply was filed by the applicant on 24.5.93. After hearing the parties, by the order dated 17.12.90, this MP was dismissed by the order dated 22.7.93 noting that the similar prayer made in MP-2180/90 had not been allowed. However, we shall later refer to certain other matters arising from this MP.

11. The applicant filed on 25.1.91 the third MP-315/91 along with copies of certain inter departmental correspondence claiming that, in the promotee quota of Lab. Assistants there was still one vacancy and prayed that the applicant be allowed to join as Lab. Assistant in the Shakurbasti or Tughlakabad Shed against the 9th vacant post. On 15.4.91 both CCP-214/90 and this MP were listed. Apparently, no final order has been passed on this MP.

12. The applicant then filed the 4th MA-3368/93 which gives another turn to these proceedings. For the reasons mentioned in that MA, he prayed that a complaint under Section 340 of the Code of Criminal Procedure should be filed with the Chief Metropolitan Magistrate against all the respondents in respect of an offence punishable under Section 193 of the I.P.C., as they are alleged to have made false averments/submissions/statements before this Tribunal. A reply has been filed to this MA on 16.2.94 to which the applicant filed a rejoinder on 15.4.94..

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13. It is in this background that the OA and connected MAs came up for final hearing before us. We have heard the learned counsel for the parties at great length.

14. The applicant filed this application at the time when, according to him, because of his non-regularisation as Lab. Assistant, he lost the chance of being considered for promotion to the post of J.C.M.A. The prayer in the OA, therefore, is that the respondents should be directed to regularise the applicant's ad hoc promotion as Lab. Assistant with effect from the date of ad hoc promotion. As against this, the respondents' case is that the applicant already stood reverted to his substantive post of Lab. Khalasi (Lab Technical Attendant) on 14.6.90 and that he did not subsequently appear in the selection held for regular appointment to the post of Lab. Assistant. We shall first consider the OA and thereafter we shall consider MA-3368/93 and other matters, if any.

15. We shall straightaway consider the prayer in the OA regarding regularisation in the light of the grounds urged as mentioned in para 2 supra.

16. The order dated 29.7.85 promoting the applicant as Lab. Assistant on ad hoc basis is at Annexure A-3 (page 15). Relevant extract is reproduced below:-

"1. Shri Het Ram Lab. Khalasi Dsl Shed, SSB who has been found suitable for AME/Dsl/SSB for the post of Lab.Asstt. is put to officiate locally temporarily as Lab.Asstt. grade Rs.260-430(RS) purely on adhoc basis liable to be reverted at any time, against one of the four newly created posts of Lab.Asstt. vide APO-III & DAO/DLI's Joint letter No.803-E/61/Dsl/SSB dt. 19.6.85 for DM

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Plant at Dsl Shed, Ambala, two posts of which have, for the time being, temporarily been operated in SSB for Chrome Planting & DM Plant work of Dsl Shed, SSB till sanction for the same is accorded. Shri Het Ram is posted against one of these posts at SSB."

It is thus clear that not only was this an ad hoc promotion but it was on a post, essentially temporary, because it belonged to the Ambala diesel shed. Respondents state in their reply that this post was transferred back to the Ambala Division vide letter No.758-E/10/Pt.IV/DSL/P-5 dated 25.9.89. The Chemist and Metallurgist, Amritsar who assists the Senior D.M.E., Tughlakabad in respect of the cadre of Lab. Assistants, received this memo and by his D.O. letter dated 18.12.89 (Annexure MP-3 to MP-315/91 - page 69) to the former, he stated that the applicant was working on this post but that he was not the juniormost person to be reverted. In fact he advised on 15.1.90 (page 70) that Satya Prakash the juniormost Lab. Assistant should be reverted, when he came to know that by the letter dated 28.12.89 (not produced), the reversion of the applicant had been ordered. The matter was then taken up with the Divisional Personnel Officer. Copies of letters dated 7.2.90 and 17.3.90 have been filed (pages 71-72). It is then that the Divisional Personnel Officer informed all concerned on 1.6.90 as follows:-

"No.758E/10/Pt.IV/DSL/P-5 DRM's Office NDLS Dt. 1-6-90

Dy. CME/SSB Sr. DME/DSL/TKD

Sub: Sh. Het Ram and Satya Parkash Lab. Khalasi Offg. as Lab. Asstt.

Ref:- Dy. CME letter No.25.1.31 and Sr. DME letter No.TKD/EST/23/Pt.VI Dt.11-4-90.

Since local officiating is now banned, both the above mentioned officiating arrangements may be terminated.

sd/- DPO/NDLS"

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A copy of this letter was produced during the hearing and is kept on record. It is in pursuance of this letter that the applicant was reverted by the order dated 14.6.90, issued by the Deputy Chief Mechanical Engineer (Design) Shakurbasti, New Delhi. This was the letter shown to the Bench on 21.6.90 when an interim order was issued. That authority (i.e. Dy. C.M.E.) is not a respondent in this case. That order is also not exhibited in this O.A. However, it was produced by this official, who was impleaded as Respondent No.3 in the CCP-214/90 filed by the applicant alleging contempt by violation of the interim order dated 21.6.90, along with his reply dated 19.9.91 as Annexure R-2 thereto. That order, which is in Hindi, is addressed to the General Foreman, Shakurbasti who is informed that in accordance with the Divisional office letter dated 1.6.90, reproduced above, the applicant has been reverted from the post of Lab. Assistant. He was directed to take necessary action and report compliance.

17. From the foregoing account it is clear that (i) the applicant was given ad hoc promotion on a post of Lab. Assistant, which belonged to the Ambala Division (ii) the post was transferred to that Division in September, 1989, (iii) it was then decided to revert the applicant and a letter had been issued on 28.12.89 (iv) various authorities pointed out that Het Ram, the applicant was not the juniormost; (v) it was even mentioned that Satya Prakash deserved to be reverted and (vi) finally, the Divisional Office settled the issue in their letter dated 1.6.90, consequent to which he was reverted by the order dated 14.6.90.

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18. Therefore, the applicant can have no case that as he was continued on ad hoc basis for a long time without any reversion, he ought to have been regularised. His ad hoc promotion has been terminated by reversion. Hence, he cannot, thereafter, claim regularisation. Besides, even if he had not been reverted and even if a post was available he cannot claim a right to be regularised because^{of} of his ad hoc appointment. He had, at best, a right to be considered along with others (State of Haryana vs. Piara Singh - AIR 1992 SC 2130).

19. That finding is sufficient to dismiss this O.A. No other prayer has been made in the O.A. However, the applicant has raised a number of extraneous issues by filing a number of MPs which were pressed by his learned counsel at great length. We, therefore, consider these issues in brief, before we consider MA-3368.

20. Subsequent to his reversion to the post of Lab. Khalasi, the applicant was given an opportunity to appear in the test for regular promotion as Lab. Assistant. An examination was to be held for this purpose. A memo issued on 16.7.90 to all concerned indicated that written examination was fixed on 4.8.90 and the interview on 20.8.90 and that 28 persons were to be relieved for this purpose. The applicant was one of them. (Annexure P-1 at page 39 with applicant's rejoinder). He and certain others were to be relieved by the D.C.M.E., Shakurbasti. The General Foreman, Shakurbasti Diesel Shed informed his counter-part in the Tughlakabad Shed on 3.8.90, about the names of persons who were relieved (Annexure P.II page 40). The name of the applicant does not appear. He, therefore, did not appear in this test. On the basis of this selection three persons were selected for

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regularisation viz. Baldev Singh, K.K. Dutta and Uttam Chand, all of Tughlakabad Shed (Annexure A-2 with MP-2180 page 51).

21. The learned counsel for the applicant throws the blame on the respondents and other authorities for the inability of the applicant to appear in the examination. He made an issue of it on 21.8.90. He pointed out that his name did not find mention in the Annexure P-II dated 3.8.90, though it was included in the Annexure P-I list. He complained that the applicant was not informed about the test. It was, therefore, directed that if the applicant wished to appear in the written test for the post of Lab. Assistant the respondents shall permit him to take the test.

22. This was partly a misrepresentation of facts. The applicant was not a Lab. Assistant in the Shakurbasti Diesel Shed, though so designated in the P-1 notice. He had already been reverted on 14.6.90. He did not join the Shakurbasti Diesel Shed as Lab. Khalasi after reversion. Hence, there was no question of his being relieved for the test. He has to blame himself for the consequences.

23. Further, in accordance with the order dated 21.8.90 the applicant had to inform the authorities concerned that he wished to appear in the written test. The applicant has no case that he did so and yet was not permitted to appear in any later test. Indeed, the learned counsel for the applicant contended that the applicant has no such responsibility. We are unable to agree. Therefore, the

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applicant cannot make any grievance out of the fact that even after 21.8.90 he was not given a chance to appear in the examination.

24. It is further contended by the learned counsel for the applicant that as the applicant has already been selected earlier for the post of Lab. Assistant, there was no need to appear in any further examination. He relies on the Annexure A-4 letter dated 17.1.74 of the Northern Railway Headquarters (Page 16) in which it is stated, inter alia, as follows:-

"ii) The posts of laboratory Asstt. grade Rs.110-200 (AS) against 25% promotee quota, from amongst the eligible staff in the category of laboratory Attendant Gr. Rs.80-110 (AS) may be filled up on "Seniority-cum-suitability" basis and no written test is to be prescribed."

25. We reject this plea summarily. If in spite of this circular the applicant was appointed only on ad hoc basis in 1985, his grievance in this regard arose then. He should have agitated the matter then. Besides, he has not challenged in separate proceedings the Annexure P.1 notice for the examination. Indeed, his complaint was that he was not informed about the examination. The applicant is blowing hot and cold.

26. The applicant's other grievance is about his reversion. He came to know about the order dated 14.6.90 passed by the Dy. C.M.E. Shakurbasti reverting him when this OA came up on 21.6.90 for admission. In the circumstance, the applicant ought to have amended the OA and impugned the order of reversion. As that has not been done, we are not required to consider the validity of the reversion. We confine our consideration to the statements made by the respondents that

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none junior to the applicant was working as a Lab. Assistant when the applicant was reverted and more particularly the statement made when the case was heard on 6.12.90 vide para 7 supra. On the contrary it is contended that K.K. Dutta and Satya Prakash, juniors to the applicant, were allowed to continue as Lab. Assistants and that the respondents have falsely contended to the contrary.

27. The applicant has filed Annexure-A-2, which is the provisional screening panel of Lab. Khalasi. The learned counsel for the applicant calls it a seniority list. The relevant particulars of the applicant, K.K. Dutta and Satya Prakash are as follows:-

No.	Name	Shed	Date of initial appointment.	Date from which attained temporary status and continuously working	Total No. working days
8.	Applicant (Het Ram)	Shakur-basti	10.9.76	10.4.78	1330
10.	Kamal Kant Dutta	Tuglaka-bad	30.4.77	27.8.77	1218
11.	Satya Prakash	Tuglaka-bad	10.4.78	10.4.78	1164

28. We cannot accept the claim that the panel is a seniority list. The names in the panel have been arranged on the basis of the total number of days. Reckoned thus, the applicant is ^{senior to} both K.K. Dutta and Satya Prakash. This would be the position only if they are treated as simple casual labourers. That is not the case. They have been given temporary status also. In that event, the seniority will be counted with effect from the date on which they attain temporary status, If persons have attained temporary status on

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the same date, their inter-se-seniority will be determined by the number of working days to their credit. On this basis the seniority of the three persons would be as follows:-

<u>Name</u>	<u>Date of getting temporary status</u>
K.K. Dutta	27.8.77
Het Ram	10.4.78 (1330)
Satya Prakash	10.4.78 (1164)

Therefore, we find that as a Lab. Khalasis, the applicant is junior to K.K. Dutta, but senior to Satya Prakash.

29. We shall now consider the seniority as Lab. Assistant. A notice dated 20.6.85 (Annexure MP-1 to MP-315/91 - page 65) was issued by the Assistant Mechanical Engineer, Diesel Shed, Shakurbasti to fill up the newly created four posts of Lab. Assistant on ad hoc basis. It stated that a suitability test would be held on 8.7.85 for the Lab. Khalasis of Shakurbasti, Kalka and Ambala Diesel Sheds only. It excluded the Tughlakabad Diesel shed. Therefore, prima facie, there is a separate seniority list for Tughlakabad shed where K.K. Dutta was working.

30. The service book of K.K. Dutta shows that he was promoted to officiate as Lab Assistant at Diesel Shed, Tughlakabad by order dated 24.9.83. Thus, he was promoted about two years earlier than the applicant. This also confirms that promotion was made shedwise and each shed had a separate seniority list. He was reverted on 2.12.83 but repromoted on 2.8.85, no doubt, later than the date of adhoc

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promotion of the applicant. But, as these are two different seniority units, they cannot be compared. K.K. Dutta is senior to the applicant as Khallasi. Hence, the fact that he continued as Lab. Assistant while the applicant was reverted does not falsify the statement made on 6.12.90 extracted in para 7 supra.

31. In so far as Satya Prakash is concerned, the respondents have stated that he has also been reverted like the applicant, based on the same orders of the D.P.O. dated 1.6.90 referred to in para 16 supra. This finds confirmation in MP-2180/90 filed by the applicant in which the applicant has prayed that he be continued as Lab. Assistant and in which, inter-alia, he points out (page 42) that the post vacated by Satya Prakash is lying vacant. Therefore, no doubt can be entertained about Satya Prakash's reversion. This has also been confirmed by the letter dated 15.10.94 of the Senior Divisional Mechanical Engineer, Tughlakabad to the Assistant Personnel Officer, which is on record.

32. Therefore, the respondents have rightly contended on 6.12.90 that no person junior to the applicant as Khallasi was continued as Lab. Assistant when the applicant was reverted. No false statement was made in this connection.

33. A word about the interim order dated 21.6.90, which directed as follows:-

"In the meantime the respondents may not revert the applicant till the hearing on 5.7.90 when the question of interim relief will be taken."

The respondents in the OA are (i) Union of India through the General Manager, Northern Railway, Boarda House, New Delhi, (ii) The Divisional Railway Manager Northern

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Railway, State Entry Road, New Delhi and (iii) The Chief Metallurgist, Locomotive Workshop, Northern Railway, Charbagh, Lucknow, UP. The applicant did not produce any proof of service of this order on any of these respondents. No affidavit, along with acknowledgement of receipt of the interim order by these respondents, has been filed. He has, no doubt, stated in the rejoinder in respect of MP-1940/90 that he served it on the three respondents. But without the supporting affidavit and acknowledgement, this averment cannot be believed. The only proof he has filed is about having sent a copy by registered post A.D. to Sh. Neeraj Kumar, Dy. C.M.E. Shakurbasti and to the Chemist and Metallurgist, Amritsar vide Annexure MP-2 to this MA (page 92). The interim order was not addressed to them. Hence, the question of violating the interim order by any of the respondents does not arise.

34. That apart, the applicant stood reverted by the order dated 14.6.90. He was on leave then. It is not correct to contend that the reversion can take effect only if it is served on the applicant. It takes effect from the date it is published for information. Therefore, the interim order itself had become infructuous.

35. In the circumstances, we find that this OA does not have any merit. Accordingly, it is dismissed.

36. We shall now consider the MA-3368/93 filed by the applicant on 21.10.93 in which the applicant alleges that the respondents have made false statements before this Tribunal in their reply to the OA and to the MPs and thereby fraudulently got the interim order vacated. It is, therefore,

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prayed that this Tribunal may file a criminal complaint under Section 340 of the Code of Criminal Procedure with the Chief Metropolitan Magistrate, New Delhi against all the respondents in respect of offences under Section 193 I.P.C. The respondents have filed a brief reply on 16.2.94 denying all the allegations made in this MA.

37. We shall consider seriatim various instances where false statements are alleged to have been given by the respondents.

38. The first instance mentioned in the MA is the statement made by the learned counsel for the respondents Sh. B.K. Aggarwal before the Bench on 6.12.90 while MP-2180/90 was heard. This has been extracted in para 7 supra.

39. We have already considered this subject earlier and concluded in para 32 that no false statement was made on 6.12.90.

40. The second alleged instance of making a false statement is referred to in para 3(ii) of the M.A. It concerns the applicant's assertion that he reported for duty at Shakurbasti Diesel Shed on 29.6.90, along with a copy of the stay order issued on 21.6.90 by this Tribunal and the further allegation that the respondents have falsely contended that he did not report for duty on this date.

41. In proof of the allegation that he reported for duty on 29.6.90, the applicant states as follows in this M.A.

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- "(ii) When the applicant (sic-went?) to join duty at Shakurbasti with the stay order on 29th June, 1990, he was told by the Deputy Chief Mechanical Engineer, Diesel Shed, Northern Railway, Shakurbasti, that since he had gone to the Court, he could be given duty by the Senior D.P.O. and he would be writing a letter about him on that very day and that he can take it personally to the Senior D.P.O. Accordingly, Shri Niraj Kumar, Deputy Chief Mechanical Engineer/Diesel, Northern Railway, Shakurbasti prepared a letter vide No.25.1.31 dated 29th June, 1990 addressed to the Senior D.P.O., DRM's Office, Northern Railway New Delhi, for kind attention of Shri P.K. Sharma, which was handed over to the petitioner on 30th June, 1990.

NOTE: As the 30th June, 1990 was Saturday, the Administrative Offices were closed, even though Shakurbasti Shed was working. 1st July, 1990 was Sunday and was also, therefore, a closed holiday and, therefore, the Petitioner submitted this letter to the Senior D.P.O. in person along with a request that he went to join at Shakurbasti, he was referred to the Senior D.P.O. by the Deputy Chief Mechanical/Diesel Shakurbasti with this letter. This letter was received by Shri P.K. Sharma, Sr. D.P.O., who made his initial in Green Ink on the letter and handed it over back to the Petitioner with the direction to give it to the dealing clerk Smt. Usha Sharma.

- ii) As the letter was given open and not in a cover not to talk of sealed cover, the Petitioner got a photostat copy made and got it attested by a Notary Public on 30th June, 1990, a copy of which is appended and marked as ANNEXURE MP-1.

Following Affidavits sworn by the Deponents in support of the version of the Petitioner that he went to join duty at Shakurbasti and that the letter under reference was in fact handed-over by the Deputy Chief Mechanical Engineer to the Petitioner in person by hand, are appended and marked as ANNEXURE-MP-2 (COLLECTIVELY):-"

The affidavits of six railway employees are at Annexure MP-2 in this connection.

He has also filed affidavits of two other railway employees (Annexure MP3) in support of his further contention that he, in fact, went in person on 2.7.90, along with the

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letter under reference, and gave it to Shri P.K. Sharma, Senior D.P.O. who received the same, initialled it and directed the petitioner to hand it over to Smt. Usha Sharma, Dealing Assistant.

The applicant has also annexed a copy of his representation dated 5.7.90 (Annexure MP4) to the Senior DPO Northern Railway for permission to join duty as per the order of this Tribunal.

42. It is thereafter alleged in the MA as follows:-

"However and surprisingly enough, the Respondents in their manipulation have submitted in their Counter Affidavit filed by Shri Niraj Kumar, Respondent/Contemner No.3 Deputy Chief Mechanical Engineer, Northern Railway, Shakurbasti, New Delhi in C.C.P.No.214 of 1990 filed by the Petitioner in this O.A. in para 2(ii) as under:-

" He obtained the order Dasti and for which it is learnt that he has not submitted an Affidavit of service. As such the applicant remained on leave without proper sanction which was subsequently rejected and communicated to him through Registered Post and the same was refused by him. Photo copies of these are appended as Annexure CCP/R-4."

43. It is on these submissions that it is alleged that the respondents have made a patently false submission. This allegation obviously refers to Shri Niraj Kumar only in view of what is stated in para 42 supra.

44. We note that Shri Niraj Kumar is not a respondent in this O.A. He was a respondent only in CCP-214/90 arising out of this O.A. If Sh. Niraj Kumar had filed a false statement in the CCP, the applicant should have filed a MA for taking action against him in that CCP only. Further, we do not see from the extract of the reply of Shri Niraj Kumar extracted in para 42 supra that he made any

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statement to the effect that the applicant did not report for duty on 29.6.90. On these grounds alone, the allegation in the present MP against Shri Niraj Kumar deserves to be dismissed.

45. However, we do not propose to do so because firstly, the learned counsel for the applicant has vehemently pressed this ground and secondly, we find, as will be shown presently, that the applicant has abused the process of this Court.

46. We are unable to accept the story put forth by the applicant that, on 30.6.1990, Sh. Niraj Kumar gave him the letter dated 29.6.90 for delivering it to the addressee. It is incredible that Sh. Niraj Kumar, who is alleged to have flouted the interim order dated 21.6.90 of the Tribunal would have entrusted the delivery of the letter dated 29.6.90 to the applicant himself and, that too, in an open envelope.

47. The circumstances under which the applicant states that he got a copy of this letter notarised indicates that this is a well planned action of the applicant who was convinced that a foolproof evidence has fallen into his hands, which will help him to impeach the reliability of the respondents. Nevertheless, we are of the view for the reasons given below that this contention of the applicant viz. that he got the letter notarised with a view to strengthening his case is a false statement and is an unfortunate product of an after thought.

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- i) In the first place, there is no explanation as to why he found it necessary to either have the letter dated 29.6.90 notarised or show it to half a dozen of his colleagues. The respondents had not, as on that date, denied that he came to Shakurbasti Shed to take over charge.
- ii) His immediate conduct before the Tribunal in respect of the OA gives a lie to this claim because he has completely failed to make any reference to this incident, as if it never took place, as stated below.
- a) On 5.7.90, the Tribunal modified the earlier interim order and directed the status quo as on that date to be maintained. He did not make any declaration about this incident of 29.6.90 either on that day or on any of the three subsequent hearings, until the interim order was vacated on 21.8.90.
- b) Respondents had filed a reply on 1.8.90. The applicant filed a rejoinder on 6.8.90. In para 3 thereof he refers to the interim order dated 21.6.90 but does not state how it was flouted by Shri Niraj Kumar, Dy. CME, Shakurbasti on 29.6.90, when he allegedly met him on that day. It is significant to note that he mentions later, in that very para,

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that, on 1.8.90, he contacted the Dy. CME. The omission to state that he met him on 29.6.90 is, therefore, significant.

c) Even on 21.8.90, when the Tribunal recorded in the presence of Shri Umesh Mishra, counsel for the applicant, that both parties stated that the applicant was not working either on the post of Lab Assistant on ad hoc capacity or as Lab Khalasi on substantive capacity, Shri Umesh Mishra did not even intervene to say that the applicant did go on 29.6.90 and met the Dy. CME who did not take him back despite the interim order. Perhaps, Shri Mishra had not even been made aware of the extraordinary steps, allegedly taken by his client as will be shown presently, for the simple reason that those steps had not been taken.

iii) MP-4 to this MA is the representation made by the applicant to the Senior D.P.O. on 5.7.90 i.e. three days after he allegedly delivered to him the letter dated 29.6.90 of the Dy. CME Shakurbasti. In this representation, he merely states that he met the Dy. CME, Diesel Shed, Shakurbasti but that authority refused to take him on duty as Lab Assistant and that the Dy. CME sent him to the addressee (Senior DPO) for further orders. He, therefore, requested that he be taken on duty in accordance with the Court's orders.

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There is no mention in this representation, made within a week of the alleged incident, either that the Dy. CME had also given him on 30.6.90 a letter dated 29.6.90 in this regard or that he delivered it to the Senior DPO on 2.7.90. The obvious conclusion is that such an incident did not take place.

iv) That takes us to his conduct in regard to CCP-214/90 relating to disobedience of the interim order dated 21.6.90. They are considered below.

a) The applicant stated in his contempt petition as follows:-

"2. That the respondent, their officials and agents were restrained from reverting the applicant, the applicant intimated about the order. He submitted copy of the order, but he was not allowed to resume his duty as Lab. Assistant and he was told that he was reverted. And he could join the duty of Khalasi.

3. That the applicant showed the order that he could not be reverted but all in vain. The officials of the respondents did not care for the order of the Court and the applicant was reverted to the post of Khalasi."

If the applicant had really made the elaborate preparations referred to above in respect of Sh. Niraj Kumar's letter dated 29.6.90, only to establish that, though he did report for duty on 29.6.90 at Shakurbasti shed and met the Dy. CME, he was not taken back on duty, it is surprising that he did not mention these facts as the principal evidence in the CCP. One would have expected him to have briefed his counsel Sh. Umesh Mishra, fully about the steps taken by him

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to secure documentary proof of his reporting for duty on 29.6.90. If he was not briefed it is only because this incident did not take place.

- b) It is in reply to para 2 of the CCP extracted above that Sh. Niraj Kumar filed a reply stating that the applicant sent the photo copy of the stay order through registered post and did not come to the office so that he could have been allowed to join under the orders of Hon'ble Tribunal. In his rejoinder to this reply filed on 4.6.91, through Sh. B.B. Raval, who was the counsel at this stage in the CCP, the applicant stated as follows:-

"It would be relevant to submit here that this representation/report in Hindi was personally submitted by the applicant to the Office of Senior D.P.O. for which the Diary Stamp was affixed as would be visible and it would not be the case if the same was sent by Registered Post. Consequently, Shri Niraj Kumar, Deputy CME Diesel Shed, Shakurbasti and Contemner No.3 sent a letter No.25.1.81 dated 29th June, 1990 by hand through the applicant himself to the Senior D.P.O. Shri P.K. Sharma on 29th June, 1990 itself when the applicant went to join in person and armed with the stay order issued by the Honourable Tribunal. This proves the averment of Shri Niraj Kumar in the counter affidavit as contrary to facts and amounts to false submission on verification qualifying for criminal prosecution under Section 340 of the Code of Criminal Procedure for having committed an offence under Section 193 of the Indian Penal Code. A copy of this letter from Shri Niraj Kumar Dy. C.M.E., addressed to the Senior D.P.O. for personal attention of Shri P.K. Sharma is appended and marked as ANNEXURE CCP-C."

Nothing is mentioned in the rejoinder about either notarisation of the letter dated 29.6.90 or its being shown to friends, who later filed affidavits. What is filed is merely

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photo copy of this letter attested by Sh. B.B. Raval, the petitioner's counsel and not the notarised copy of that letter.

- c) In the CCP a second affidavit dated 17.9.91 was filed by Sh. Niraj Kumar, in which he stated as follows:-

"However, it is specifically denied that the applicant came to the Deponent and the Deponent gave him the letter to carry it personally to the Sr. D.P.O. These averments are specifically denied. The letter dt. 29.6.90 was sent through Shri Inder Dev Shukla, Hindi Typist and his affidavit is placed on record as Annexure CCP/R-5."

The R-5 affidavit of Sh. Inder Dev Shukla states that he delivered the letter to the Senior DPO on 2.7.90. To this affidavit, the petitioner filed his rejoinder on 27.10.91, when, for the first time, he refers to an affidavit of Sh. Ramesh Chandra, Chemist, Shakurbasti, Diesel Shed, to the effect that the applicant showed him the letter dated 29.6.90 on Sunday, 1.7.90. This affidavit is the same as the affidavit of the deponent filed with the MP-3368/93 as MP-2. What is to be noted is that even now there is no reference to taking a notarised copy of the letter.

- v) If contempt was to be alleged and if the applicant had the notarised copy of the letter dated 29.6.90 with him to establish that this letter was given to him personally on 30.6.90 after he met the DCME on 29.6.90, nothing would have been easier than to have produced that letter with the CCP itself or at any later stage in that CCP. In contempt proceedings, this

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Tribunal is fully competent to punish the contemner. Therefore, it was all the more necessary for the petitioner to produce the best evidence available to prove his case. The only significance of its not being produced then is that it was not in existence then. Instead, it is produced with MP-3368/93 in support of a claim that the respondents have given false statements and have rendered themselves liable to prosecution under Section 193 I.P.C. by the competent Court of criminal jurisdiction.

- vi) The learned counsel for the applicant was questioned as to why the notarised copy of the letter was not filed with the CCP. He explained that, in addition to having notarised a photo copy of that letter, he had also taken additional plain copies, one of which was filed with the CCP. We are unable to accept this plea because, in our view in a contempt petition where strong and reliable evidence was needed, the notarised letter should have been produced as a strong circumstantial evidence to prove what was being claimed, viz., that on 29.6.90 the applicant reported to Sh. Niraj Kumar, Dy. CME for duty and he asked him to come on 30.6.90 to take the letter for delivering to the Senior CPO and gave it to him on 30.6.90.

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vii) These circumstances taken cumulatively lead to the irresistible conclusion that the claims made regarding (i) Sh. Niraj Kumar having given to the applicant on 30.6.90, the letter dated 29.6.90 for delivery to the Senior CPO, and (ii) notarising that letter on 30.6.90 before it was delivered on 2.7.90 are false, notwithstanding the seal of Notary Public on that copy (Annexure MP-1). If the letter of Sh. Niraj Kumar was handed over to the Senior DPO only on 2.7.90 by Inder Dev Shukla it is clear that the applicant could not have got possession of the letter on 30.6.90 to have it notarised. Hence, this required a probe to find out whether the notarisation itself was genuine. We note with regret the failure of the respondents to probe into this alleged notarisation of that letter in the above circumstances.

48. That takes us to the affidavits. The six affidavits at MP-2 do not state either that the deponents had seen the applicant reporting for duty on 29.6.90 at Shakurbasti Diesel Shed or that he met Sh. Niraj Kumar, Dy. CME on that day or that the latter asked him to come on 30.6.90 or that he went on 30.6.90 when he was given by Sh. Niraj Kumar the letter dated 29.6.90 to the Senior DPO for delivery.

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The affidavits of Arif Raja, Chemist, Bankey Lal and Sis Pal Singh, Lab. Assistants, state that the letter was shown to them and that it was to be delivered on 30.6.90 suggesting that the letter was shown to them on 29.6.90 itself. For, if it was shown to them on 30.6.90 only, they would have stated that it was to be delivered on the same day as it was shown to them and not that it was to be delivered on 30.6.90. The applicant's claim is that he got the letter only on 30.6.90. Further, according to the applicant, the letter was delivered only on 2.7.90. Likewise, the two affidavits at Annexure MP-3, make it appear that the deponents were eye-witnesses to the alleged delivery of the letter by the applicant to the Senior DPO on 2.7.90, it being initialed by that authority and its delivery by the applicant to Smt. Usha Sharma, Dealing Clerk. The applicant himself has not stated anywhere that he took all the action in the presence of these two witnesses. Thus all those affidavits are unreliable.

49. We, therefore, notice that not only has the applicant failed to establish the charge made in para 3 (ii) of the MA-3368/93 but, it would appear that he has fabricated evidence in order to secure orders from this Tribunal by deception. On this ground alone this applicant would forfeit all his right to any relief from this Court.

50. The third allegation mentioned in the MP is that in reply to MP-2180/90 the respondents had submitted as follows:-

"Main application has been admitted and is now on board where his main prayer to regularise him as Lab. Assistant is to be decided. His earlier M.P. No.1940/90 containing the same prayer has already been disposed of."

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It is stated that MP-1940/90 was disposed of much later on 22.7.93. Hence, a false submission has been made in the aforesaid reply, necessitating prosecution.

51. During the course of arguments, the learned counsel for the respondents submitted that it was only by mistake that such a submission was made. It was assumed that as MP-2180/90 was being disposed of, the earlier MP-1940/90, would have already been disposed of.

52. The fact is that MP-1940/90 was filed by the applicant on 17.7.90. There is a mention about this MP in the title in the ordersheet dated 17.8.90 though there is no reference to it in that order. There is no reference to this MP thereafter until 26.5.92.

Before this date, MP-2180/90 had been filed on 28.8.90 and the respondents filed their reply thereto on 8.11.90 (page 43) in which the statement referred to in para 50 was made. The applicant, who filed a rejoinder did not then point out that MP-1940/90 filed earlier had not yet been disposed of as alleged and he did not allege that a false statement in respect of MP-1940/90 had been made. Orders disposing of this MP were passed on 17.12.90.

53. We are of the considered view that this is purely a mistake on the part of the respondents not calling for any action for prosecution.

54. The last allegation again relates to the question of the applicant's joining at the Shakurbasti shed. It is pointed out that the respondents have always contended

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that the applicant never reported for duty at the Shakurbasti. However, it is pointed out that in para 4 of the counter-affidavit filed on behalf of the respondents in CCP-214/90 on 11.4.91 it is stated as follows:-

"Contents of this para being wrong and denied. The interim order was vacated on 21.8.1990. Hence there was no question of allowing the applicant to resume duty as Lab. Assistant thereafter. The applicant has refused to join his substantive post and has not turned up to resume duty till today."

The learned counsel contends that it is clear by inference that the applicant did go to Shakurbasti shed to report for duty, but his intention was only to join as Lab. Assistant in view of the stay order but this was not permitted. Therefore, the statement that he never went to join is false.

55. That was a reply to para 4 of the CCP. The petitioner had not alleged therein that he went to report for duty on 29.6.90. That reply cannot be construed as contended.

56. We cannot but fail to take note of how the applicant contrived, unsuccessfully though, to foist a charge of contempt on the respondents in CCP-214/80. That CCP was dismissed with the following observations:-

"8. If there was truth in the case put forward by the applicant who has come to this Tribunal for taking action in the C.C.P., we should expect him to have told all the relevant facts which gave rise to the cause of action in the petition filed by him. We should expect him to have stated on what date he went and to which particular officer did he present himself for reporting to duty. None of these vital particulars are furnished in the C.C.P. No doubt, an attempt has been made to give more particulars in this behalf at a much later stage of the proceedings. This conduct of the applicant indicates that his subsequent averments are as a result of an afterthought."

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9. The applicant was duly assisted by the counsel in preparing and presenting the C.C.P. If there was truth in his case, he would have given all the facts in his main petition. In our opinion, this is a crucial circumstance which tilts the balance against the applicant. It is not possible to believe the applicant's case that the authorities declined to entertain him when he presented himself for joining the duty in Class III post on the strength of interim order. Hence, this C.C.P. fails and is dismissed. The Rule is accordingly discharged."

We would have been content to dismiss MA-3368/93 also with the same observations. However, we are constrained to observe that even after the dismissal of CCP-214/90, the applicant has filed MA-3368/93 for which there was no justification. This was an abuse of the process of this Court and was vexatious in nature. Not only that, we have found that the applicant has gone further than in the CCP and made false claims by alleging that the letter dated 29.6.90 was handed over to him on 30.6.90 by Sh. Niraj Kumar and that he delivered it on 2.7.90 to the Senior CPO and that he had got a photo copy thereof notarised on 30.6.90 and that he had shown it to many of his colleagues. In the circumstances this is a fit case where the applicant should be saddled with costs.

57. In the circumstances we do not find any merit in MA-3368/93. Accordingly, it is dismissed. MP-315/91 is also dismissed.

58. For the detailed reasons given above, the O.A. is dismissed.

59. We have referred to the conduct of the applicant in para 56 supra. He deserves to be dealt with severely. However, considering the troubles he is facing, we take a lenient view and direct that he shall pay Rs.1,000/- (Rupees one thousand only) as costs to the second respondent.

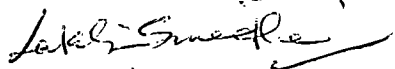
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within two months from the date of receipt of this order, on receipt of which the second respondent shall credit it to Government account in the appropriate head.

60. We have found on the basis of circumstantial evidence that the affidavits filed by various persons which have been exhibited as MP-2 and MP-3 collectively by the applicant with MA-3368/93 are unreliable. ~~We make it clear~~ ^{that} it is open to the respondents to proceed departmentally against them for having filed affidavits in support of a false claim, though we make it clear this allegation has to be established independently in such proceeding.

61. The O.A. is dismissed with the above orders and directions.


(Smt. Lakshmi Swaminathan)
Member (J)

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(N.V. Krishnan)
Vice-Chairman (A)