

Central Administrative Tribunal
Principal Bench, New Delhi
....

O.A. 2780/92

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New Delhi, this the 27th day of July, 1999

HON'BLE SHRI S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SHRI P.C. KANNAN, MEMBER (J)

In the matter of;

Shri Gulshan Rai s/o Shri Manga Ram,
Trains Clerk, Northern Railway,
Ludhiana.

.....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,
Ferozepur.
3. The Chairman,
Railway Recruitment Board,
Jammu Tawi.

... Respondents

(By Advocate:- Shri P.S. Mahendru)

O R D E R

By Hon'ble Shri P.C. Kannan, Member (J):

1. The applicant who worked as Trains Clerk under the Respondents is aggrieved against the order dated 22.9.1992 passed by the Senior Divisional Operating Manager removing the applicant from service with immediate effect on the ground that the panel No. 217A dated 16.9.1991 of selected candidates for the post of Trains Clerk grade 950-1500 (RPS) on which the name of Sh. Gulshan Rai Sethi son of Hans Ram Sethi under roll No. 1001018 is bogus and fraudently made out and that the applicant's name was not borne on the original and

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authenticated, panel No. 217 received from the Railway Recruitment Board, Jammu-Srinagar.

2. The case of the applicant is that in pursuance of the advertisement given by the respondents for recruitment of Train Clerks in the grade of 950-1500, he applied for the same. After holding a written examination as well as viva-voce, the panel No. 217 dated 16.9.1991 (Annexure A-2) was formed and sent to D.R.M. Ferozepur Cantt. Another panel No. 217A (Annexure A-3) containing 7 more names including that of the applicant was formed and sent to D.R.M., Ferozepur in October, 1991. The applicant also received an advice from the Railway Recruitment Board that his name has been recommended to D.R.M., Ferozepur for appointment to the said post (Annexure A-4). The applicant was thereafter sent for training after verification of his antecedents and medical examination. After undergoing the training, the applicant was posted as Train Clerk by order dated 30.5.92. The applicant states that he fell sick from 22.9.1992 and he was informed that the respondents had decided to remove the applicant from the service arbitrarily without holding any inquiry. The applicant stated that even though the order of removal was not served on him, his colleagues who have also been removed from service on similar ground had met him and furnished a copy of the removal order of removal (Annexure A-9) and states that a similar order was also issued to him. The applicant states that action has been taken against him under rule 14(11) of the Railway Servants Discipline & Appeal Rules without holding any inquiry taking the plea that it was not practicable or that there is any necessity conducting of D&AR enquiry under the rules as the documentary proof to show that the applicant's appointment was not genuine. It was also stated that no witnesses are likely to come forward to associate in such an enquiry. The

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applicant contends that the removal order is absolutely arbitrary, discriminatory and unconstitutional.

3. The respondents in their reply denied that the applicant's name found a place in the approved panel of selected candidates (Annexure R-II). An advertisement for 8 number of posts of Trains Clerk ^{was made} and the final selection panel No. 217 dated 16.9.1991 was issued by the Board for 8 candidates only (R-II). The respondents further stated that panel 217 attached with the O.A. which is for 10 candidates is bogus and fraudulently made out. It was also stated that panel 217-A (Annexure -A-3) which is for 7 candidates including the applicant and the selection letter of the applicant dated 7.10.1991 as Annexure A-4 were prepared fraudulently and are bogus. It was further submitted that the roll no. of the applicant as indicated in the panel No. 217-A dated 7.10.1991 (Annex. A-3) and Selection letter dated 7.10.1991 (Annex. A-4) is 1001018. However, as per the records of the Board, the real applicant bearing roll no. 1001018 was one Sh. Suresh Chand s/o Sh. Jokhy Ram (Ann. RX-2) (filed along with affidavit dated 31.8.1998). It was also submitted that final result was published in leading newspapers (Ann. R-III) which contained only 8 names who were finally selected. The respondents also requested that the applicant should produce the following records; (i) the result as published by the Board in the newspapers on the basis of which he was selected and appointed by the Board; (ii) postal registration receipt under which he sent the application; (iii) counter-foil of the postal order; (iv) the letter of acknowledgement issued by the Recruitment Board and allocating him a roll number; and (v) the advertisement in the newspapers through which he was called for the written test and interview to show that the candidate bearing his roll number was called for the written test & interview. The respondents, therefore, stated that as the applicant gained employment through bogus

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records and he was not regularly selected and appointed as railway servant; it was not considered necessary to give an opportunity of hearing. The respondents also referred to the decision of the Principal Bench in case of Sanjiv Kumar Agarwal vs. Union of India (1987(3) SLJ (CAT) 353). Chairman, Railway Recruitment Board, Jammu & Srinagar and Divisional personal officer filed affidavits in support of their stand.

4. We have heard Shri B.S.Maine, counsel for the applicant and Shri P.S.Mahendru, counsel for the respondents.

5. The main argument of the learned counsel for the applicant has been that the order under challenge has been made under rule 14(ii) of the rules dispensing with inquiry on the ground that it is not practicable to conduct a D&AR inquiry as provided in the rules and no witnesses are likely to come forward to associate in such an inquiry. He submitted that there has been no threat to witnesses or that any effort has been made to show that it is not practicable to hold an inquiry. He also referred to the proceedings of this Tribunal on 4.8.1998 in which the departmental file was produced. After the perusal of the notings in the file, this Tribunal observed that in the file produced before it no reasons of the competent authority were recorded to show why a regular inquiry was not possible. In the light of the judgement of the Hon'ble Supreme Court in the case of Jagdish Mitter vs. UOI (AIR 1964 SC 449) and other pronouncements of the judicial bodies, he submitted that the order of removal passed in this O.A. is liable to be struck down.

6. Sh. Mahendru, counsel for respondents referred to the judgement of the Chandigarh Bench of this Tribunal in OA 1167/92 and 15 other cases in which identical issue arising out of the same panel which is the subject matter of this O.A. and other cases and submitted that in the light of the findings of the Tribunal in those cases, the O.A. is not to be rejected.

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7. We have carefully considered the submissions of the counsel for both the parties and perused the pleadings.

8. Shri Mainee, counsel for the applicant has contended that before issuing the impugned order under rule 14(ii) of the Rules dispensing with the inquiry, the competent authority is required to record reasons to show why regular inquiry was not possible. He referred to the judgement in the case of Jagdish Mitter vs. UOI (Supra) in which Hon'ble Supreme Court observed that when the termination of the public servant's services can be shown to have been ordered by way of punishment then it can be characterised either as dismissal or removal from service. It is also now settled that the protection of Art. 311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants, or probationers and so, if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Art. 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Art. 311(2) have not been complied with. In the light of the above observations of the Supreme Court, he submitted that the impugned order is arbitrary, violative of the principles of natural justice and also violative of Constitution. The perusal of the above judgement shows that in that case the appellant was appointed as temporary government servant and his appointment was continued from time to time. On the basis of a complaint received against the appellant, matter was investigated and his services were

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terminated as he was found undesirable to be retained in government service. Judgements of this Tribunal in the case of Om Dutt Vs. Union of India (1995(2) Vol.19 ATJ P.24)/^{and} in the case of Shri Sheo Bahadur Yadav vs. Union of India & Ors. (ATR 1988(2) P.384) were also referred to. The facts of those cases are not similar to the facts in the present case. In this O.A. the ground taken by the respondent is that the select panel is itself a fabricated one and, therefore, the appointment of the applicant has become void. As no legal right flows from a void order the applicant cannot claim protection under the service Rules. Hence, the termination order cannot be questioned by the applicant.

9. The case of the applicant is that he was empanelled for appointment as a Trains Clerk with roll No.1001018 in terms of Annexure A-3. The respondents denied the same and produced the relevant records to show that the particular roll number was not allotted to the applicant and also required the applicant to produce the letter received by him from the Recruitment Board indicating the roll number, the advertisements issued by the Board regarding the roll numbers of successful candidates who were qualified for interview, viva-voce and finally selected candidates. The Chairman, Railway Recruitment Board has also filed affidavit and stated that panel 217A (Annexure A-3) under which the applicant has claimed that he was selected for the said post is not genuine and is a fabricated one. He also stated that all the files relating to the said recruitment have been seized by the C.B.I. and a criminal trial is pending. The other senior officers of the Railways have also filed affidavits to show that the panel under which the applicant has claimed to have been recommended by the Railway Recruitment Board is a fabricated one. The applicant has not filed any documentary evidence to show that he was allotted the roll number as given in Annexure A-3 and that he appeared in the

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written test and viva-voce. In the facts and circumstances, we are inclined to agree with the respondents that panel 217A dated 7.10.1991 under which the applicant claims that he was recommended for appointment as a Trains Clerk is not a genuine one. It may also be mentioned that a bunch of similar 16 original applications filed before the Chandigarh Bench of this Tribunal in the case of Brij Mohan vs. UOI & Ors. [1995(CAT) A-1 SLJ 109] wherein the impugned order was similar to the one in the present O.A., the question for determination was coined in the following words:

"whether the selection/appointment to a public/ Govt. service allegedly based on forged/fake or fraudulently made selection panels can be terminated without affording any opportunity of being heard to the aggrieved individual?"

10. After discussing the entire case law on the subject including the Judgement of the Hon'ble Supreme Court in the case of Union Territory of Chandigarh vs. Dilbagh Singh & Ors. (AIR 1993, SC 796) and U.P. Junior Doctors Action Committee vs. B. Sheetal Nandwani (AIR 1991 SC page 909), the Tribunal came to the conclusion that the order of removal from the post was not the result of any misconduct on the part of the applicant but is the outcome of some acts which occurred and are antecedent in point of time. In the circumstances, the Tribunal upheld the removal order. As in the case of Brij Mohan, in the instant case also the respondents have clearly shown that the applicant was not included in the select panel 217. When the respondents came to know about the forged panel 217A under which the applicant was appointed, they took immediate steps and issued the impugned order removing the applicant from service. We, therefore, do not find any illegality, infirmity or arbitrariness in the action of the respondents. Moreover, as observed in Brijmohan's case (Supra) this impugned order cannot be termed as an outcome of any misconduct on the part of the applicant necessitating any inquiry before its issuance. Infact the issuance of impugned order is the outcome of some acts of forgery by vested individuals which occurred and are

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antecedent inpoint of time; before the applicant could actually take up the position as T.C. with the respondent Railways and settle the reto. It is needless to go into the controversy as to who actually is responsible for the preparation of forged panel 217A (Annexure A-3) when on the basis of their investigations the respondents have found that Annexure A-3 is forged and the applicant actually has not succeeded in the selection and when steps have already been taken to register^a case in the Police. On this aspect we can reproduce the observations made by the principal Bench in case of Sanjeev Kumar Agarwal vs. Union of India & Ors (1987 (3) (CAT) S.L.J.353 in para 13 which reads as under:-

"It is unnecessary in this case to go into the question as to who is responsible for this fraud or mistake. Suffice to note that these candidates had not qualified - for appointment and were offered appointment either as a result of mistake or fraud. Those who qualified for appointment were not offered appointment. Their roll numbers were utilized by the applicants either in collusion with some other officers and of the staff selection Commission to secure their nominations ~~that~~ for appointment of the offer was made by mistake of someone. It is on the basis of such nominations that the appointment letters were issued. If the applicants had not taken the tests at all and yet on receiving the offer of appointment which clearly stated that the Staff selection Commission had nominated them to join this post accepted the offer, they must be taken to be party to the fraud or at least to be labouring under the mistake for if they had not appeared for the test, they could not have been selected by the Staff Selection Commission and nominated for appointment. That they did not appear for the test was known to the applicants and yet they did not disclose that fact and joined the post. The Staff selection Commission and the appointing authority must, therefore, be held to have acted under a mistake or were induced to make the offer of appointment by fraudulent means though it could not be said with certainty as to who was guilty of fraud. In any event, the appointment would be vitiated. Such appointments would be of candidates, who were not eligible to be appointed under the Rules. When such appointments are terminated, it would be allowing the applicants to abuse the process of the court if they granted any relief as a result of which such illegal appointments are restored. Quashing such orders of termination would revive appointments which should never have been made".

11. In the facts and circumstances, we are of the view that the judgement in Dilbagh Singh's case and in the cases of U.P. Junior Doctors Action Committee vs. B. Sheetal Nandwani and the judgement of the Chandigarh Bench in the case of Brijmohan & Ors. vs. Union of India (supra) would apply with full force

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in the instant case. The applicant is, therefore, not entitled to any opportunity of being heard before the issuance of the impugned order.

12. The O.A., therefore, fails and is accordingly dismissed.
No costs.

P. C. Kannan

(P.C.KANNAN)
MEMBER (J)

S. R. Adige

(S.R. ADIGE)
VICE-CHAIRMAN (A)

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