

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TXX. No. 3197 of 1992

Decided on: 31/98

(18)

Avtar SinghApplicant(s)

(By Shri B.S. Maine Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri None Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter Y or not?
2. Whether to be circulated to the other X Benches of the Tribunal?

K. MUTHUKUMAR
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 3197 of 1992

New Delhi this the 3rd day of December, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

(19)

Shri Avtar Singh
S/o Shri Jagjit Singh
C/o Shri B.S. Mainee,
Advocate
240 Jagriti Enclave,
Delhi-92.

..Applicant

By Advocate Shri B.S. Mainee.

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chairman,
Railway Recruitment Board,
Jammu Tawi.
3. The Principal,
Supervisors Training Centre,
Northern Railway,
Char Bagh,
Lucknow.

... Respondents

None for the respondents.

ORDER

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

Applicant prays for quashing of the order of termination of his Apprenticeship as Apprentice Assistant Chargeman (Mechanical) by the impugned order at Annexure A-1. The case of the applicant is that by a communication dated 27.11.1991, he was informed that on the basis of the written test on held on 17.2.1991 and interview on 11.3.1991 to 15.3.1991, his name had been recommended to the General Manager, Northern Railway, Baroda House, New Delhi for appointment as Apprentice Assistant Chargeman

(Mechanical). His grievance is that his Apprenticeship had been suddenly terminated without any show cause notice issued to him.

(25)

2. Applicant appeared for Apprentice Assistant Chargeman (Mechanical) in the scale of Rs.1400-2300 in response to an advertisement at Annexure A-2. It is an admitted position that the respondents allotted Roll No. 95507. He qualified in the written test and was called for an interview on 12.3.1991. The respondents, however, submit that on the basis of the combined merit of written test and interview he could not qualify finally for the post of Apprentice Assistant Chargeman (Mechanical). The final result as published in the News Papers on 23.3.1991, did not include the applicant's Roll No. indicating that though he appeared for interview, he could not qualify. The respondents have, however, not annexed the final results. However, in reply to the applicant's claim that he was communicated about his selection and that he was included in panel 206-A forwarded by the Chairman, Railway Recruitment Board to the Northern Railway and have averred that the panel No.206-A dated 20.3.91 for 39 candidates was sent to General Manager, Northern Railway, Baroda House and the above panel was first and last panel sent to the Northern Railway, Baroda House, New Delhi. The respondents further aver that the panel No.206-A of 27.11.1991 which stated to have contained the name of applicant, was indeed a bogus panel. The respondents further aver that the selection letter communicated to him was a bogus one. The respondents assert that the applicant had actually secured employment on the basis of bogus (forged) panel No.206-A.

They also point out that the applicant applied for the post in the name of Avtar Singh Ramgarhia whereas in the bogus letter and other records based on bogus selection it shows the name only as Avtar Singh. The respondents further aver that the master list prepared for the selection is in an alphabetical index of all the eligible candidates for a particular post and it shows registration number, roll number, candidate's name, father's name and his address beside other information. As regards the rejection of his representation, the respondents submit that he had also signed a bond which stipulated that if he was guilty of misconduct, his Apprenticeship would be terminated and there was nothing illegal about this termination.

3. The respondents have also filed an affidavit of the Chairman, Railway Recruitment Board, Jammu-Srinagar. In this affidavit it has been declared by the Chairman, Railway Recruitment Board Shri Laj Kumar, under oath, that the applicant could not qualify in the interview held on 12.3.91 and his roll number did not appear in the final result published in 23.3.91. It has been further declared in the above affidavit that the panel No.206-A dated 27.11.91 as seen in the record of General Manager, Northern Railway contained only 4 names including that of the applicant. The Chairman, Railway Recruitment Board has certified in this affidavit that this panel No.206-A was not issued by his office and is, therefore, bogus one and his signature on that was also forged.

4. The learned counsel for the applicant strenuously argued that the affidavit of the Chairman, nowhere says that the letter of his selection as per Annexure A-3 was not signed by him. It only says that the panel was not issued by his office and his signature on the same viz. the panel was forged. The learned counsel tried to emphasize that the Chairman had signed the letter communicating the selection to the applicant.

(22)

5. We have heard the learned counsel for the parties and have perused the record.

6. The applicant strongly relies on the communication addressed to him directly from the Chairman informing him of his selection. The learned counsel submits that in the Railway Recruitment Board's letter the selection letter is generally being signed by the Chairman himself personally. Although this appears to us to be somewhat odd, we consider that the affidavit subsequently signed by the Chairman, Railway Recruitment Board personally stating that the panel No. 206-A was not issued by his office and that his signature was forged, could not be dismissed as being without relevance. Further, as per the reply of the respondents while the panel No. 206-A was the first and last panel sent to the General Manager, Northern Railway, Baroda House, New Delhi, the other panel 206-A was stated to have been dated 27.11.91. Ordinarily in the same selection, particularly meant for the same office, the candidates selected should have been finalised and sent in the same

panel. We do not see any ground to reject the contention of the respondents and also the affidavit of the Chairman who had sworn that the aforesaid panel was bogus and his signature had been forged.

23

7. The learned counsel relied on **Jagdish Mitter Vs. The Union of India, AIR 1964 SC 449** to contest that the departmental enquiry has not been held in this case and, therefore, the termination of his Apprenticeship has been vitiated. We have seen the aforesaid case. This related to termination of service of a temporary Government servant. In the facts and circumstances of the case, the Apex Court held that the applicant's contention that the order of discharge passed against him was not a discharge but a dismissal, could not be rejected and it was incumbent on the authority to offer the said temporary Government servant on probation, protection guaranteed under Article 311 of the Constitution. Their Lordships felt that in that case the termination order was not an order simpliciter. The order as extracted in the above judgment, read as follows:-

Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949".

8. However, in the case of the applicant the impugned order is an order simpliciter and it casts no stigma on the applicant. Besides, the applicant has also not alleged any mala fide in his application against anybody. He has only alleged that the action is arbitrary. The facts and

(2A)

circumstances in the above case are not parimateria and this decision is not of any help to the applicant. Reliance is also placed on the decision of the CAT Hyderabad Bench in S. Gurcharan Singh Vs. The G.M. Ordinance Factory Project Yeddu Mailaram Medak District, ATJ 1991(2) page 527. In that case the applicant was discharged after 2 months of his probation. It was stated that the applicant indulged in undesirable activities. It was held in the aforesaid case that if the services were to be terminated during the period of probation for undesirable activities involving discipline, the correct procedure for the respondent would be to initiate an enquiry and then take further action in the light of the findings. In the present case, however, it is found by the respondents that ab initio the applicant's appointment was based on a panel which was stated to have been forged and the applicant did not qualify in the interview and his name was not included in the panel No.206 which was communicated in March, 1991 to the General Manager. It was on this ground that his appointment was found to be irregular and the impugned order of termination of Apprenticeship was issued. The order of termination of Apprenticeship, according to us, is an order simpliciter and the applicant does not allege any mala fide against anybody.

9. Reliance is also placed on the Single Bench Judgment of the Patna Bench in Prithwi Nath Yadav and Others Vs. State of Bihar and Others, 1992(1) AISLJ page q10. In this case, the petitioners were appointed in pursuance of the advertisement and they continued as such

[Handwritten mark: a large 'L' shape with a horizontal line through it is written on the left margin.]

for three long years and some of them had also been confirmed in that post. It was later on found that these appointments were not made in consonance with some orders of the Department of Personnel and Administrative Reforms. The Bench observed that even the affidavit filed by the respondents were found to be vague and no statutory provisions or instructions were shown and it was not clear how such appointments violated the statutory provisions, if any. The respondents (State of Bihar) were not in a position to point out which particular procedure was not followed and the impugned order was also silent in this behalf. It was on this ground the termination of the appointment was held to be bad in law. We find that the facts and circumstances in the aforesaid case are quite distinct and distinguishable and are not parimateria with the present case where the initial appointment was found to be based on a bogus panel/selection and it was clearly averred that the applicant had not qualified in the interview and was, therefore, not included in the select list, as published.

10. In the cases of such termination of service orders, law is well laid down in **Parshotam Lal Dhingra Vs. U.O.I.**, 1958 SLR 828 and also in **State of U.P. Vs. K.K. Shukla**, 1991 (1) SCC 691 and in **Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar**, 1992 (4) SCC 719. Since there is no allegation of mala fide, we do not find any basis to conclude that this order of termination was a camouflage for punishment. When his appointment ab initio was found

2/6

to be based on a forged and bogus panel of selection, it would not be necessary to verify further whether the impugned order was penal in nature. The Apex Court in *Biswa Ranjan Sahoo and Others Vs. Sushanta Kumar Dinda and Others*, 1996 (5) SCC 365 have held that in case of mal-practices and fraudulent appointments, no notice is required for termination of appointments.

11. In the conspectus of the above discussion, there is no merit in the application and it is accordingly dismissed. No order as to costs.

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

[Signature]
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh