

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2341/93

199

19th July 1999

DATE OF DECISION

Madan Mohan

....Petitioner

Shri Anis Suhrawardy

....Advocate for the
Petitioner(s)

VERSUS

Union of India

....Respondent

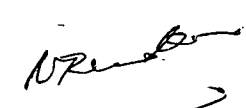
Shri R.L. Dhawan

....Advocate for the
Respondents.

CORAM

The Hon'ble Hon'ble Shri V. Ramakrishnan, VC(A)
The Hon'ble ~~Six~~ Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.


(V. Ramakrishnan)
VC (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.2341/93

New Delhi this the 19th Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Madan Mohan,
S/o Shri Lachhman Dass,
C/o Shri B.B. Sharma,
B-102, Reeds Lane,
University of Delhi,
Delhi-110007.

Applicant

(By Advocate: Shri Anis Suhrawardy)

Versus

1. Union of India
through its General Manager,
Northern Railway,
Baroda House,
New Delhi.

4. Assistant Controller
of Stores,
Northern Railway,
Amritsar.

2. Chief Personnel Officer,
Northern Railway,
State Entry Road,
New Delhi.

3. Deputy Controller of Stores,
Northern Railway
Shakurbasti,
New Delhi.

Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

Hon'ble Shri V. Ramakrishnan, VC (A)

The applicant who was engaged for sometime as a Casual Labourer, Khallasi is aggrieved by the stand of the Railway Administration in not reinstating him in service and has sought for a direction to quash and set aside the order dated 29.7.1993 at Annexure A-3 which has turned down his request for further engagement as Casual Labourer and regularisation of his services.

2. This is the second round of litigation.

The applicant was engaged as a Casual Labourer, ~~in~~ ^{as} ~~from~~ ^{on} February 1982 to 16.7.1988 at different spells and not continuously. He was not given further employment as a Casual Labourer beyond July 1988. He had submitted a representation dated 21.2.1991 requesting for absorption in regular Railway Service. On getting no favourable response, he approached the Tribunal in O.A. 2356/91, which was decided on 13.5.1993. The Tribunal observed in para 5 of its order as follows:

"In the counter affidavit it has been averred that the petitioner had a bad past conduct and he entered the service of the Railway earlier illegally. Be that as it may, the Deputy Controller of Stores, while considering the representation of the petitioner, shall take into account all the facts and thereafter give a decision. If he feels that the representation of the petitioner should be rejected, he shall give reasons and communicate the same to the petitioner within a period of two weeks from the date of passing of his order. The Deputy Controller of Stores shall pass a speaking order as expeditiously as possible".

The applicant submitted another representation to the Deputy Controller of Stores, Northern Railway, Delhi on 6.8. 1993 requesting for reinstatement of his services and referring to the Tribunal's direction. His representation has been turned down by the Railway Administration by letter dated 29.7.1993 at Annexure A-3 which says that he was discharged from services due to securing the job illegally by producing false and bogus documents and rejected his request ^{for} further engagement as well as regularisation.

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3. We have heard Mr. Anis Suhrawardy, learned counsel for the applicant and Mr. R.L. Dhawan, learned counsel for the respondents.

4. Mr. Suhrawardy contends that the action of the respondents in refusing to take him back in service and to regularise him is not in accordance with law. He says that the Tribunal had ordered on 13.5.1993 directing the Railways to dispose of the representation within two weeks. However, the Railways reply rejecting the request was dated 29.7.1993 which was much after the prescribed period and there is no proper compliance with the Tribunal's order. He also submits that admittedly he was engaged by the Railways as a Casual Labourer from 1982 onwards upto 1988 in different spells and had worked for a substantial number of days as is evident from the Casual Labour Card, copy of which is at Annexure A-4. The counsel contends that this would entitle him to conferment of temporary status and subsequent regularisation. He says Railway's Administration decided that he would no longer be engaged as a Casual Labourer on the allegation that he had produced false documents without giving any opportunity to him to state his case. According to Mr. Suhrawardy this is against the principle of natural justice. He further submits that the applicant is interested in getting the job and is prepared to forego backwages and seeks a direction to the Railways to reengage him as a Casual Labourer.

4. Shri R.L. Dhawan, learned counsel for the respondents contends that when the applicant was engaged in 1982 as a Casual Labourer, it was done on the basis of his claim that he had worked as a Casual Labourer from 1978 onwards. It was made clear that this engagement is subject to verification of his previous service as Casual

Y Labourer claimed to have been rendered in 1978. When the question of giving him temporary status arose, the previous service claimed to have been rendered by the applicant under IOW, Madhopur (Punjab) and Jammu Tawi was sought to be verified and it was found that no such office at Madhopur was functioning. The Casual Labourer Card No. 199561 submitted by the applicant which contains entries of his previous working as Casual Labourer in 1978 was thus a bogus card. This would show that the applicant had made a false claim for securing appointment fraudulently as otherwise he could not have been engaged as Casual Labourer in 1982 in view of the Railway's instructions that no fresh Casual Labourer can be recruited after 3.11.1981 without obtaining the prior approval of the General Manager.

Shri R.L. Dhawan submits that where the appointment has been secured fraudulently, there is no need for regular enquiry and such appointment orders can be legitimately treated as voidable at the option of the employer. He refers in this connection to the decision of the Supreme Court in the case of Union of India Vs. M. Bhaskaran 1996(1) S.C.S.L.J P.1. It is also his stand that as the applicant had not been conferred with temporary status, there is no requirement to follow the provisions of the Discipline and Appeal Rules and there is no need to hold a regular enquiry. He relies on the provisions of Para 2005 of the Indian Railway Establishment Manual (IREM) in support of this position. As the applicant had produced a forged document while securing the initial appointment he has no right to claim the benefit of re-engagement or regularisation.

5. We have carefully considered the submissions of both the counsel. The issue in this O.A. is not regarding the termination of the services of the applicant in July 1988 but a challenge to the decision of the Railway Administration in refusing re-engagement. It is, therefore, not necessary to go into the contention that he should have been given an opportunity to state his case before his services as Casual Labourer were terminated in 1988. In the earlier O.A., the direction to the Railway was only to dispose of the representation seeking fresh engagement. This has been done by the Railways and this representation has since been disposed of and communicated to the applicant by letter dated 29.7.1993. No doubt, it was not done within the period of two weeks from the date of the Tribunal's order. Mr. Dhawan had submitted that a copy of the order was received later and the decision which was communicated in July 1993 is not inordinately delayed. While technically there is an infraction of the Tribunal's direction, we hold that in the circumstances of the case the delay is not very material. In any case, we are not dealing with a contempt petition at present. Mr. Suhrawardy also mentioned that the reply of the Railways refers to ~~bo~~gus documents without spelling out exactly which are such documents. However, the applicant would be aware of the same and this position has been brought out clearly in the reply statement and has not been controverted by submission of any rejoinder.

6. Mr. Suhrawardy had argued that whatever may be the past position, the fact remains that the applicant had put in approved service as Casual Labourer for over

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1400 days from February 1982 to July 1988 as is seen as per the Casual Labour Card and this should have been taken into account by the Railways and the applicant would be entitled to grant of temporary status and regularisation. He submits that in any case the applicant should be re-engaged by the Railways and he will not claim backwages. As regards this contention, we find that initially when the applicant was engaged, it was done only because he had claimed that he had worked as a Casual Labourer in 1978 ^{and} but for ~~the~~ statement he would not have been engaged as Casual Labourer with effect from 17.2.1982, in view of the ban on engagement of Casual Labour except with the approval of the General Manager. The Railways state and this has not been disputed, that he was engaged in 1982 as a Casual Labourer subject to verification of his previous service. Such a verification was sought to be done when the question of granting him temporary status was under consideration and it was then found that the applicant had relied on bogus documents. His services were accordingly terminated. Mr. Dhawan has submitted that having secured the initial appointment fraudulently, the applicant cannot seek further benefits including re-engagement, conferment of temporary status, regularisation etc. In M. Bhaskaran's case referred to (supra), we may reproduce the Head Notes:

(A) Appointment - Workmen employed in railway secured their appointment on the basis of bogus and forged casual labour service cards - Fraud detected - Such appointment orders can be legitimately treated as voidable at the option of the employer and can be recalled by the employer -- Removal from service ordered after following the due procedure of law and in due compliance with the principle of natural justice - No infirmity in the impugned order.

(14)

(b) Appointment - Removal - Estoppel - Appointment secured by submitting bogus and forged casual labour card - Removal from service ordered - Mere continuity on the post for a number of years on the basis of such fraudulently obtained employment order does not create any equity in favour of employee or any estoppel against the employer".

7. In the facts of this case, we hold that the decision of the Railway in not re-engaging ^{her} is based on sound and valid grounds.

9. We find no merit in the O.A. and dismiss the same. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

V. Ramakrishnan
18/7/1986
(V. Ramakrishnan)
Vice Chairman (A)

Mittal