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Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 1007/93

Decided on 12.7.99

Brij Bhushan Applicant

(By Advocate: Shri B.S. Mainee)

Versus

U.O.I. Respondents

(By Advocate: Shri P.S. Mahendru)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

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

1. To be referred to the Reporter or Not? YES

2. Whether to be circulated to other outlying
benches of the Tribunal or not? No.

Adige
(S.R. ADIGE)

VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

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O.A. No. 1007 of 1993

New Delhi, dated this the 12 July, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Brij Bhushan,
S/o Shri Hukkam Chand,
Ex-Mobile Booking Clerk,
R/o Qr. No. 291-D, Punjab Line,
Ghaziabad. ... Applicant
(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways, Rail Bhawan,
New Delhi.

2. The General Manager,
Northern Railway, Baroda House,
New Delhi.

3. The Divl. Railway Manager,
Northern Railway,
State Entry Road,
New Delhi. ... Respondents

(By Advocate: Shri P.S. Mahendru)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant prays for reengagement as Mobile Booking Clerk, grant of temporary status and regularisation.

2. As per his own averments, he was engaged as MBC from 9.5.83 to 3.12.85; for 8 days in December, 1985; 21 days in January, 1986 and 10 days in February, 1986. He was again engaged as MBC on 12.5.90 and discharged (emphasis supplied) on 25.5.90.

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3. Respondents in their reply state that applicant was reengaged as MBC by office letter dated 11.5.90, but this reengagement was secured by concealment and suppression of facts. Respondents state that applicant was initially engaged as MBC on 9.5.83. During a vigilance check in February, 1986 he was found involved in misappropriation of Government money and upon inquiry it was found that he had misappropriated Rs.8911/- upon which he was removed from service. Respondents state that he had concealed the fact about his removal from service when he approached the authorities for reengagement, but when this fact came to light his reengagement was terminated. Respondents further state that on 29.10.90 he deposited a receipt and appealed for being taken back on duty but the same was rejected.

4. Applicant's counsel Shri Maine has cited a large number of rulings including ATR 1998 (1) CAT 26; ATR 1989 (2) 23; ATR 1989 (2) 37; ATJ 1990 (1) 606 and SLJ 1991 (1) 190 to support his prayer for a direction to respondents to reengage applicant as MBC. It is, however, clear that if indeed applicant secured reengagement as MBC in May, 1990 without disclosing that earlier he had been removed from service for having misappropriated Government money which fact he had suppressed when securing such reengagement, he would be guilty of obtaining employment by suppressing material facts and would not be entitled to any direction of the kind prayed for.

5. Respondents in their reply had stated that they were enclosing copies of the various letters and orders issued by them in support of their averments referred to in Para 3 above. Those letters/orders were, however, not enclosed with their reply. We had granted time to Shri Mahendru to obtain copies of the same and file them separately, but despite time granted he has not filed them either.

6. This, however, does not necessarily mean that respondents' averments contained in their reply and referred to in Para 3 above are untrue. Shri Mahendru points out that applicant himself admits he was discharged (emphasis supplied) in May, 1990 vide Para 1.2 of the O.A. and in the corresponding para of his rejoinder to respondents' reply to Para 4.12 of the O.A. (where it is expressly stated that applicant was removed from service), he does not deny that he was removed, but states that "the alleged removal of applicant by respondents is void, ab initio". This is not the same thing as saying that applicant was not removed from service. If applicant's removal was indeed void ab initio it was open to him to have challenged the same at that point of time, but there is nothing to indicate that he ever did so.

7. There is a strong presumption of the correctness of Government actions and having regard to the facts and circumstances noticed above,

particularly the letter numbers and dates of letters/orders said to have been issued by respondents, (even if not actually produced by them) and the absence of categorical and unequivocal denials by applicant to the same, prima facie we have no good reasons to doubt that respondents removed applicant from service when it came to light that he had secured reengagement as MBC by concealment and suppression of the fact that he had earlier been removed from service for misappropriation of Govt. funds.

8. In this view of the matter, none of the rulings relied upon by Shri Maine advance applicant's case and we find ourselves unable to issue the direction prayed for by applicant. The O.A. is dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)

Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/GK/