

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 1312 OF 1998

ALLAHABAD THIS THE 16th DAY OF May 2008

**HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN
HON'BLE MR. N.D. DAYAL, MEMBER-A**

Gaja Prasad, S/o late Nanhu Prasad, R/o Amoghpur,
P.O. Mughalsarai, District Varanasi.

.....Applicant

(By Advocate S/Shri S.K. Dey and S.K. Mishra)

V E R S U S

1. Union of India through the G.M. N. Railway, Calcutta.
2. The Divisional Mechanical Engineer (C&W), E. Railway, Mughalsarai.
3. The Assistant Mechanical Engineer (C&W), E. Railway, Mughalsarai.
4. Polhawan, S/o late Nahnoo, R/o Village Amoghpur, Post Mughalsarai, District Varanasi.

.....Respondents

(By Advocate: S/Sri K.P. Singh and B.N. Singh)

O R D E R

BY N.D. DAYAL, MEMBER-A

The applicant has submitted that he entered Railway service as Labourer on 21.9.1978 following compassionate appointment upon expiry of his father late Sri Nanhoo, who was a Fitter.

2. His mother had applied for compassionate appointment of the applicant and he was appointed after enquiry by P.I., Danapur, who gave his report

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dated 5.2.1976 (Annexure-1) as well as after police verification.

3. However, on 16.1.1982 he was terminated for having obtained service by fraudulent means. A Writ petition filed by him, was allowed by judgment and order dated 27.2.1987 (Annexure -2) and he was reinstated by order dated 29.4.1987. He claimed wages for the period from 16.1.1982 to 30.4.1987. A show cause notice dated 19.8.1987 was served upon him and he was again terminated by order dated 6.5.1988. O.A. no. 354 of 1989 filed by him was allowed on 7.12.1994 (Annexure-3) and he was again reinstated on 5.1.1995. Once again he claimed wages from 6.5.1988 to 4.1.1995 whereupon he was served with a major penalty chargesheet dated 21.4.1997 (Annexure-4). He sought certain documents, but they were not given to him instead he was asked certain information regarding his family members, which he submitted on 12.6.1997 (Annexure-8). Enquiry Officer was appointed and again no document was given to him during the enquiry. He made a representation on 11.8.1997 against appointment of Enquiry Officer, but without result. Enquiry was conducted by Sri S.K. Biswas, Senior Section Engineer. The Enquiry officer gave finding against the applicant on 8.1.1998. The disciplinary authority removed him from service by order dated 6.2.1998 (Annexure-11). He preferred an appeal (Annexure-12) on 18.2.1998, which had not been disposed of as the records were

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taken by the Chief Vigilance Inspector (Annexure-13). The punishment order shows that the Senior DPO, E.Railway/Mugalsarai conducted a fact finding enquiry by his report of 10.2.1997, whereas enquiry report was submitted on 8.1.1998 by the Sr. Section Engineer, who is subordinate and lower in rank than Sr. D.P.O. The enquiry report of the Sr. DPO was not given to the applicant.

4. The question in this case is whether the applicant is son of late Nanhoo or not. If not, his appointment on compassionate grounds would not stand. The applicant submits that he repeatedly asked for family declaration made by late Shri Nanhoo during his service to be produced because it would be very relevant in this regard. However, it was not produced. The applicant has stated that he submitted School certificate, Certificate of A.D.M. (E), Varanasi, domicile certificate and ration card (Annexure 14 to 17) which show the applicant's father's name was Nanhoo, but the Enquiry Officer relied upon voters list and Khatauni, which are not admissible under Evidence Act. The applicant has alleged that he has been removed three times from service and has not been paid the salary for the period he was kept out of job. He also submits that the impugned order was not passed by appointment^{ing} authority.

5. The applicant is, therefore, before us seeking quashing of removal order dated 6.2.1998 and his reinstatement with all consequential benefits. He also seeks direction for payment of due wages for intervening period 16.1.1982 to 30.4.1987, 6.5.1988 to 4.1.1995 and 6.2.1998 to the date of reinstatement.

6. In their reply, the respondents have alleged that the applicant obtained appointment by fraudulent means suppressing the material fact that he was son of Sri Sunder and not late Sri Nanhoo. This came to light after a complaint was received. The respondents have been acting in accordance with the directions of the Court from time to time and it is not correct for the applicant to allege that every time he claimed for wages, disciplinary action was started against him. It has been submitted that the relevant documents were made available to the applicant during the course of enquiry, whose copies are available at Annexure CR-1 to 6 of Counter Reply. The appointment of Enquiry officer was in order and the relevant file was received back from the Vigilance on 13.11.1998, whereas the applicant did not wait and filed the O.A. on 15.11.1998.

7. The respondents state that the Sr. DPO, Mughalsarai got enquiry conducted by Welfare Inspector, report of which was submitted on 10.2.1997, that the applicant's father was late Sri

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Sunder as per Khatauni and Intikhab. The records produced by the applicant do not seem to be correct as they are contrary to Khatauni and Intikhab received from Chandauli Court.

8. The respondents contended that in so far as the claim for wages of the applicant is concerned, no order for payment was made by the Court. Infact, the applicant has concealed that he has filed a case under the Payment of Wages Act before the Court of SDM, Chandauli, which is pending. Therefore, he has not come with clean hands. The P.I. Danapur, who gave his report had submitted the same on the false documents produced by the applicant.

9. In his Rejoinder, the applicant has reiterated the grounds taken earlier. However, he has further stated that in the enquiry conducted by Sr. DPO, the applicant was not informed to appear. Besides there is difference in the name of the applicant in the Khatauli, which shows the name as 'Gaja Ram'. Supplementary Affidavits have also been filed in this matter adding additional documents to support the contentions already made on both sides.

10. We have heard the learned counsel for the parties and perused the pleadings.

11. In so far as the claim for wages of the applicant is concerned, the matter seems to be pending in the Learned Court of SDM, Chandauli and

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such contention of respondents has not been effectively controverted. Mere denial would not be sufficient.


12. The question as to whether late Shri Nanhoo or Sunder was the father of the applicant is a question of fact and fact finding enquiry appears to have first been conducted by P.I., Danapur whereupon the applicant was given appointment. Later on another such effort by Sr. DPO through Welfare Inspector went against the applicant. The two are evidently contrary to each other. A perusal of the Article of charge does not show any mention of the fact finding report of Sr. DPO. The list of documents by which the Article of charge was proposed to be sustained also does not mention the fact finding report of Sr. DPO. However, the impugned order of removal from service dated 6.2.1998 states as under:

*"After going through E.O's full enquiry report, the enquiry report of Sr. DPO/ER/MGS on page no. 87 dated 10.2.1997, and of Nyalaya Tehsildar/Magistrate, Chanduali on page 86 dated 24.1.97 I am concluding that there is no doubt that Sri Gaja Prasad is the son of Sunder and not of late Nanhoo. It is proved that he had given a wrong declaration in obtaining Rlys, appointment on compassionate ground. Hence, the following order is passed.
"He is removed from the Railway Services w.e.f. 7.2.98"*

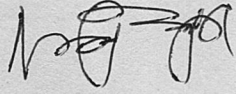
13. Evidently, the punishment takes into account the enquiry report of Sr. DPO dated 10.2.1997 in addition to other materials. The Enquiry Officer submitted his report on 8.1.1998, but no copy of the same appears to be on record. Since the fact finding report of Sr. DPO stated to have been got carried

out through Welfare Inspector does not form part of the charge-sheet or documents to be relied upon in the enquiry, it has to be concluded that extraneous material has been taken into account while passing the punishment order. To the contention of the applicant in para 4(24) of the O.A. that the report of Sr. DPO was not given to him, the respondents in their Reply have contested the documents produced by the applicant as false, but made no comment in this regard. Further, since the report of Sr. DPO went against the applicant, denial of opportunity to him to respond to the same and instead relying upon the report alongwith other materials to impose punishment of removal from service has in our considered opinion caused prejudice to the applicant and violation of principles of natural justice.

14. Therefore, without going into the various other grounds taken by the applicant, we hold that the punishment imposed upon the applicant is unsustainable. The impugned order of removal from service is, therefore, quashed. It would be open to the disciplinary authority to take up the matter from the stage of enquiry. In that event, the applicant would be at liberty to raise all the grounds found necessary including those taken in this O.A.

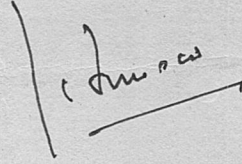


15. The O.A. stands disposed of as above, with no order as to costs.



MEMBER-A

GIRISH/-



VICE CHAIRMAN