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Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1073 of 1983

Harendra Applicant.

Versus

The Divisional Railway Manager,
N.Rly., Allahabad & others Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

This application under Section 19 of the Administrative Tribunals Act, 1985, is for quashing the order dated 30.1.1987, contained in Annexure '6', terminating the services of the applicant after notice with effect from 18.2.1987.

2. It appears that the applicant was working as Casual Labour from sometime in 1983. Some investigations were made by the respondents regarding identity of the applicant with reference to his certificate of educational qualifications and it was considered by the respondents that the certificate of educational qualifications was incorrect. On that basis the applicant's name from the panel was struck off by order dated 25.7.1986 (Annexure '5-A') and on the basis of that cancellation the impugned termination order was passed on 30.1.1987 giving 15 days notice to be effective from 14.2.1987.

3. The applicant's case is that the respondents have misread the educational qualifications certificate and have not given any opportunity to the applicant to meet the challenge of its being erroneous.

4. We have heard the learned counsel for the parties. The educational qualifications certificate is Annexure '7'. In unmistakable terms it mentions the applicant's date of birth to be 5.12.1950 repeated in Devnagari Script accordingly. It describes this certificate

to relate to Parikshan Narain's son Harendra.

5. The case in para 8 of the written statement is that there appears to be "a correction/overwriting in the year column of the date of birth" which makes the applicant's case wholly "improbable". Sri A.K. Gaur, learned counsel for the respondents, refers to Annexure '1' in support of this supposed correction/overwriting. This is not a letter by the applicant at all; it is a letter of some official of the respondents forwarding the applicant for medical examination. Sri Gaur thinks that there is overwriting on the figure "34" of the age. There is no overwriting. Moreover, the date of birth is written separately as 5.12.1950.

6. The respondents have not produced any documents in their custody to show that there was any error, overwriting or correction in the date of birth of the applicant.

7. In para 9 of the counter affidavit it is stated that in the School Leaving Certificate the person concerned is described as "Parichchan Narain S/o Harendra", whereas the applicant seeking employment had signed his name as "Harendra Rai, S/o Ram Parichhan Rai". There is a clear misreading of the School Leaving Certificate (Annexure '7'). The person is described as "Parikshan Narain's son Harendra" and not "Parikshan Narain, S/o Harendra". Sri Gaur has been good enough to concede to this error. The alleged application of the applicant's seeking employment has not been produced before us. It is not possible, therefore, to hold that there was any doubt about the identity of the applicant in the matter of employment.

8. A very important aspect of the respondents' reply in paras 9 and 18 of the written statement is that when enquiries were made by a Welfare Inspector from the school authorities, the genuineness of the certificate could not be ascertained because of non-availability of record. It is plain enough that if the record from which verification could be made was not available, the

department had no means to suspect the accuracy of the document which had been in its possession. The finding of the Welfare Inspector would have been based on no material unless a proper enquiry was instituted and the applicant was given an opportunity to show-cause in respect of the suspicious certificate; that admittedly has not been done.

9. Sri Gaur lays great emphasis upon what he calls 'condition precedent' of the employment of the applicant. Relying upon Annexure '5-B' the letter dated 6.1.1986, by which the applicant's name was struck off from the panel, he points out that the appointment itself had been made subject to the condition that regularisation thereof would be made when educational qualifications and the period of work was found to be satisfactory. In the first place Annexure '5-B' is no evidence of the conditions of appointment; it only contains some recitals of what the writer considered to have been included in the conditions. The primary evidence was the appointment order itself, which has not been produced. In the second place Annexure '5-B' straight away proceeds to delete the name of the applicant from the panel; it is not based by any such enquiry with which the applicant could have been associated.

10. The learned counsel for the respondents refers to the case of S.K. Agarwal v. Union of India (1987 (3) CAT 990) to show that in a case where appointment is obtained by fraud and dishonesty, it is not necessary to follow the principles of natural justice and to give an opportunity to show-cause. That was a case where thorough enquiry had been made by the competent administrative authorities on the basis of available records and it was demonstrated before the Tribunal itself on the merits that the result of the selection examination on the basis of which the employees obtained the job itself did not relate to the employees, but to some strangers. The facts of that case are entirely different from the case before us, the most important point being that the Welfare

Inspector, who made the supposed enquiries from the school authorities, had no material before him.

11. On a consideration of all the aspects of the case, we are satisfied that the applicant's certificate could not have been done away with, nor his name could have been struck off from the panel in the manner in which it has been done.

12. The application is, therefore, allowed and the impugned orders dated 25.7.1986, contained in Annexure '5-A' striking off the applicant's name from the panel, and the order dated 30.1.1987, contained in Annexure '6', terminating the services of the applicant, are quashed. The respondents are directed to reinstate the applicant within one month from the date of receipt of a certified copy of this judgment. The applicant shall be paid wages from the date of reinstatement, but shall not be paid back wages. It will be open to the respondents to institute a proper enquiry into the genuineness or otherwise of the applicant's identity, date of birth, after giving reasonable opportunity to the applicant in the matter. The applicant shall also get ^{other} consequential benefits on restoration of his name on the panel on the basis ^{that} ~~of~~ his name had never been struck off. There will be no order as to costs.

KR Alwani

MEMBER (A).

PD

VICE-CHAIRMAN.

Dated: February 8, 1990.

PG.