

(open court)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Dated, Allahabad. This 21st December, 2000

CORAM : Hon'ble Mr. Rafiq Uddin, Member (J)  
Hon'ble Mr. S. Biswas, Member (A)

original Application No. 1535/94

1. Naseem Khan S/o Shri Mahandi Hasan Khan  
resident of Village Jarela, P.O. Jigan  
District Mirzapur
2. Hari Har Singh S/o Ram Jan Singh  
Resident of Bakar Mandi, Rawatpur Gaon,  
Kanpur
3. Shri Krishna S/o Ram Nath
4. Masaudhi Sahu S/o Madheri Sahu
5. Rajendra Prasad  
Serial No. 3 to 5 are residents of 4 A, Jamunia  
Bagh Rly. Colony, Kanpur
6. Bhagwan Singh S/o Kashi Singh  
83A/8, Juhi Khurd, Kanpur

..... Applicants

Counsel for the applicants : Shri K.S. Saxena

V E R S U S

1. The union of India (the General Manager, N.Rly.,  
Baroda House, New Delhi)
2. The Chief Administrative Officer (Const.)  
Northern Rly., Kashmere Gate, Delhi
3. The Asstt. Engineer (Const.) II,  
Northern Rly., Kanpur
4. The Senior Civil Engineer (Const.)  
N.Rly., Kanpur

..... Respondents

Counsel for the Respondents : Shri P. Mathur

O R D E R

(Open court)

(by Hon'ble Mr. Rafiq Uddin, JM)

Applicants have sought quashing of the order of  
punishment of their dismissal from service.

Briefly stated the case of the applicants is that  
the applicants were engaged as Casual Labour against  
existing vacancies on the basis of appointment letter  
issued by the Office of the Chief Administrative Officer

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(Construction), Northern Railway, Kashmere Gate, Delhi. The applicants also claim that they were re-engaged on the basis of their working days as Casual Labour. After their re-engagement as Casual Labour they were also granted temporary status from various dates mentioned in the C.A. The Assistant Engineer (Construction) II, Northern Railway, Kanpur, Respondent No.3, and the Senior Civil Engineer (Construction), Northern Railway, Kanpur, Respondent No.4, issued charge sheet of major penalty to the applicants. Thereafter on receipt of the replies submitted by the applicants to the aforesaid charge sheets the Respondents nominated Enquiry Officer who after concluding the enquiry submitted his findings that the charges have been proved against the applicants. Disciplinary authority issued show cause notices to the applicants enclosing copy of the Enquiry Officer's report for their reply. Replies to the aforesaid show cause notice and after receiving of the replies submitted by the applicants the disciplinary authority passed the impugned order dated 23.9.1994 dismissing the applicants from service with immediate effect. It appears that the allegations against the applicants are that they have fraudulantly secured appointment letters signed by Shri Ajit Singh, APO/C, Kashmere Gate, Delhi in connivance with A.P.O. (Construction) and reported for duty as re-engaged Casual Labour without having even worked prior to 1981 and/or without the specific and personal approval of General Manager.

The applicants have challenged the validity of their dismissal order mainly on the ground that the charge is levelled against them pertain to the period when they were not the Railway servants and were ex-daily wages Casual Labour. Hence they are not covered under the provision of Railway Servants D & A Rules, 1968 A. There is also no direct evidence to prove connivance of the applicants in procuring appointment letter from A.P.O. And it has also pleaded that

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copy of the enquiry report of the Chief Vigilance Inspector was not made available to the applicants during the enquiry and no opportunity was given to the applicants to cross-examine the witnesses.

We heard Learned Counsels for the Applicants and Respondents. Learned Counsel for the Respondents has raised a preliminary objection regarding the maintainability of the O.A. stating that the applicants have not availed the opportunity of filing appeal against their dismissal order. Hence the O.A. is not maintainable being pre-mature. In support of his contention he has relied on, "S.S. Rathore Vrs. State of Madhya Pradesh, SCC (L & S) 1990 in which it has been observed by the Appex Court that 'the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where statutory remedy is provided entertaining the appeal or representation is made where no such order is made, though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. This observation has been made in the Context in Section 20 (2) of the Administrative Tribunal Act. In the present case it is admitted position that the applicants have approached the Tribunal without availing of filing statutory appeal before the Appellate authority. The O.A. is, therefore, appears to be pre-mature. However considering the facts that the provision of section 20 of the Administrative Tribunal Act are of discretionary in nature because it provides that Tribunal shall not ordinarily admit applicant unless it is satisfied that the applicant has availed all the remedy available, we did not find sufficient reason to dismiss the present O.A. on this ground at this stage on this ground.

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The Learned Counsel for the applicants has pointed out in the present case that the applicants have been punished for their alleged act during the period when they were not in employment of the Railway Administrative because they are alleged to have procured their appointment letters fraudulently without having worked prior to 1981 and without specific approval of the General Manager. It is sufficient to state that the applicants have not denied the allegations made by the Respondents that the information mentioned in their appointment letters were false. Besides, conclusion regarding particulars of previous engagements of the applicants mentioned in their appointment letters were false have been reached by the Enquiry Officer by conducting full fledged enquiry after giving opportunity to the applicants. The Learned Counsel for the applicants has not pointed out any other irregularities in conducting the enquiry by the Enquiry Officer. It has, however, been stated by the Learned Counsel for the applicants that the applicants were not given opportunity to cross-examine the Chief Vigilance Inspector being main and important witness during enquiry. It is, however, stated by the Learned Counsel for the Respondents that the report of the Vigilance was not relied upon by the Enquiry Officer. Hence the question of cross-examination of the Chief Vigilance Inspector does not arise. In our opinion in case the Chief Vigilance Inspector was not cross-examined by the Enquiring officer the enquiry proceedings cannot be said to have been conducted improperly because if the Enquiry Officer has reached the conclusion on the basis of other materials on the records it was not necessary to examine each and every witness during the enquiry. Moreover the report of Vigilance Inspector was not relied upon by the Enquiring Officer. The most important aspect of the case as has been stated earlier is that the applicants have not questioned the allegations of their appointment letters being improper and having not been issued by the competent authori-

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ty. It has been rightly contented by the Learned Counsel for the Respondents that since re-engagement of the applicants was made on their previous working days which were not established by the applicants, therefore, it cannot be said that the applicants have been punished for their alleged act when they were not in Railway employment. As a matter of fact since the appointments have been made on the basis of aforesaid documents which are not genuine, therefore, the Respondents could have "legally dismissed the applicants from service even without holding any regular enquiry. The appointment letters of the applicants being not genuine documents they have no legal right to remain on the posts which they are holding.

For the reasons stated above we do not find any merit in the case. The O.A. is accordingly dismissed.

No order as to costs.

S. B. *[Signature]*  
AM

Rat-*[Signature]*  
JM

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