

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 478/2006

ALLAHABAD this the 19th day of **August, 2011**

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J
HON'BLE MR. D.C. LAKHA, MEMBER -A

Lal Man Yadav s/o Phool Chand Yadav r/o Kunda
Khurd, P.O. Mughalsarai, District Chandauli.

.....Applicant

V E R S U S

1. Union of India through G.M. E.C. Railway,
Hajipur, Bihar.
2. The Senior D.O.M. E.C. Rly, Mughalsarai, District
Chandauli.
3. The Divisional Operating Manager, E. C. Railway,
Mughalsarai, District Chandauli.

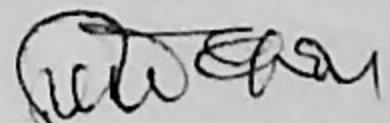
.....Respondents

Present for the Applicant: S/Sri S.K. Dey & S.K.
Mishra

Present for the Respondents: Sri K.P. Singh

O R D E R

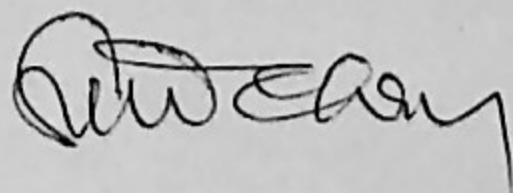
(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)



The instant O.A. has been instituted for the following relief:

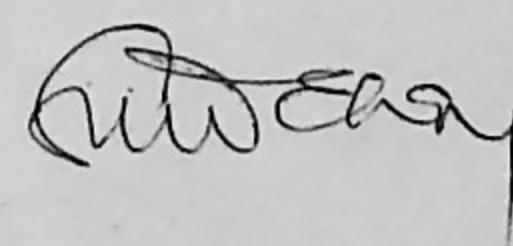
- (i) *"That this Hon'ble Court may be pleased to quash impugned order dated 23.4.03 and he may be continued in service with entire consequential benefits."*
- (ii) *"Any other relief or reliefs to which he is entitled may also be awarded"*

2. Pleadings of the parties may be summarized as follows. It has been alleged by the applicant that he entered Railway Service in the year 1997 in Group D service vide order dated 15.12.1997 and since then he continued in service upto July, 1999. Due medical examination was conducted and he was found fit to work in medical category A-2 and was posted as Shuntman grade II on 7.4.98 under S.M. Sonenagar. On request, he was transferred vide order dated 3.7.99 to Mughalsarai and the applicant joined at Mughalsarai on 4.7.99 after being spared from Sone Nagar and on the same day he fell ill and was admitted in Railway Hospital Mughalsarai. After being fit, he appeared for duty and he was directed to work at Bungalow of respondent No.3. The applicant refused to the work as domestic servant at Bungalow of respondent No. 3 and thereafter he was not allowed duty and he was marked absent unauthorizedly. The applicant is a poor group D employee and used to perform his duty in the office of the respondents and he never refused to work in the office and the respondents directed the applicant to get out from the office and threatened to implicate him in criminal police case. Neither any notice, nor any charge sheet was served on the applicant



but a letter was received directing the applicant to submit explanation to the enquiry officer, of the charges for major penalty. Proper reply was submitted by the applicant but there has not been any response from the respondents, hence the O.A. No. 1655/04 was filed and the same was decided by directing the respondents to decide the representation of the applicant on 10.1.2005, but no compliance was made by the respondents. Thereafter, he had moved for contempt. C.A. was filed in the contempt petition and by the C.A., he came to know about the order passed by the respondents, but the order was not speaking and it was passed due to extraneous consideration. It is arbitrary act of the respondents and the order is liable to be quashed.

3. The respondents contested the case and filed the Counter reply and denied all the allegations of the petition. It has further been alleged that the applicant is not a railway employee as his appointment was not as group D staff by the railway. Annexure I with the O.A. is totally false and fabricated document. This letter has been addressed at the District Chandauli but on 15.12.97 District Chandauli was not in existence. It was part of Varanasi. That Chief Medical Superintendent also certified that the medical certificate was not issued by him. Consequently, the applicant was directed to produce the original engagement letter dated 15.9.87 and from the original document fabrication can be established. Action was taken against the applicant for producing forged document. That the applicant had never been appointed as substitute Group D in C&W.



department and the medical examination report was also fabricated. No office order dated 3.7.99 was issued by the Personnel Department. That the orders of transfer and promotion are to be issued by the personnel Department by giving No. with date and the official record shows that no such letter was issued by the Personnel Department. The transfer order as well as Spare order are forged. It is wrong to allege that the applicant ever worked as Shuntman grade II. The Shuntman's duty is required in connection with shunting of trains. Nobody directed the applicant to work as Bungalow Peon under respondent No.3 and the applicant is required to prove strictly. No representation of the applicant was received on 20.10.2002 and 23.12.2003 as referred in the O.A. As per order of the Tribunal in O.A. 1655/2004, the representation of the applicant was decided. That all the facts alleged in the O.A. are false.

4. In response to the Counter reply of the respondents, the applicant filed R.A. and reiterated the facts which have been alleged in the O.A. It has been alleged that he was duly appointed and was transferred from Sone Nagar to Mughalsarai after being spared from Sonenagar.

5. We have heard Shri S.K. Dey and Shri S.K. Mishra Advocates for the applicant and shri K.P. Singh, advocate for the respondents and perused the entire facts of the case.

6. It has been alleged by the applicant that he was duly appointed in the Railway Service on 17.12.1997 in Group D vide order dated 15.12.1997 and since then he continued in serve upto July, 1999 and

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thereafter, the applicant was transferred from Sone Nagar to Mughalsarai on request and after being spared from Sonenagar, the applicant joined at Mughalsarai on 3.7.99, but at Mughalsarai, after joining, he fell ill and after being fit he resumed duty but he was refused. The respondents, in the Counter reply specifically denied that the applicant was ever selected and appointed in the railway service vide order dated 15.12.97 and it has been alleged that before 15.12.97 it has been put as "zero" and it has a fabrication. It has also been alleged that there is a clear evidence of fabrication that in the year 1997 District Chandauli had not come into existence and was part of Varanasi and it came into existence later on.

7. The learned counsel for the applicant argued that the respondents issued an appointment letter dated 15.12.97 appointing the applicant as Group D substitute in the pay scale of Rs. 750/- p.m./- and he was posted in C & W Department after passing the required medical examination. Annexure A-1 is the copy of appointment letter dated 15.12.97. It is a fact that it has been addressed to the applicant at his address of District Chandauli, U.P. It has been argued by the learned counsel for the respondents that on the date when the appointment letter was allegedly issued, District Chandauli was not in existence and it came into existence later on and on the date of issuing the appointment letter it was part of Varanasi. But, in this connection the applicant filed copy of Gazette of Uttar Pradesh issued on 25.5.97. It has been mentioned in the notification that from the date of issue of notification a new District

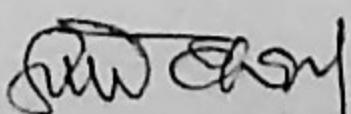
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came into existence, namely Chandauli. Hence, this contention of the respondents stands falsified from this Gazette notification of Govt. of U.P. dated 25.5.97 and it is a fact that District Chandauli came into existence on 25.5.97, i.e. the date when the notification was issued. Under these circumstances, this argument of the learned counsel for the respondents is not tenable that as in the year 1997 at the time of issue of alleged appointment letter, District Chandauli was not in existence. District Chandauli came into existence in the year 1997 in the month of May. It is a different matter that even after creation of a new District namely Chandauli people used to call the District as Varanasi or Chandauli. If the railway authorities addressed the appointment letter of the applicant at his address in District Chandauli, then it was correct and there appears no circumstances to believe that District Chandauli was not in existence and from this fact itself it can be inferred that District Chandauli was not in existence and it is a proof of forgery of this appointment letter. On this appointment letter, number has been mentioned as CS/DR/substitute/97, Mughalsarai dated 15.12.97. No other fact has been alleged to show that this appointment letter is a forged one. If it was really forged one, then the person concerned who has been shown to have signed this document, should have been produced and affidavit should have been filed. It has been signed by the then Assistant Personnel Officer, N. Railway Mughalsarai. Without filing any affidavit on behalf of the then Assistant Personnel Officer, it cannot be presumed that this is a forged document.

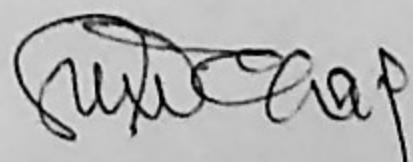
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8. Annexure A-2 is the spare/relieving order of the applicant vide establishment order No. 1530/1999 by which the applicant was transferred from Sone nagar to Mughalsarai and the transfer was on request, hence it has been mentioned in the transfer order that no T.A./D.A. will be admissible to him. It is dated 3.7.99. It has also been alleged by the respondents Advocate that it is also a forged document, but there is no other document to show that this is a forged document. Annexure A-3 is order dated 9.9.99. Enquiry was conducted against the applicant and vide this order, the applicant was required to submit his explanation to the disciplinary authority within a period of 10 days that what he had to say in this matter, otherwise ex parte decision shall be taken. Annexure A-4 has also been sent by the respondents. It is a letter addressed to the applicant on dated 17.12.99 and it has been mentioned in this letter that no defence had been received from the applicant within time after the enquiry report and one more chance was given to the applicant to submit reply. Thereafter, the applicant submitted the reply and it was stated that from Sone Nagar the applicant was spared in order to resume duty at Mughalsari.

9. A perusal of these documents show that the applicant was appointed as a Substitute Group D employee and he was required to resume duty at Sone nagar and according to the applicant he resumed duty at Sone Nagar on 17.12.1997. On request he was transferred from Sonenagar to Mughalsarai. Annexure A-2 is the order of transfer. At Sone nagar a charge sheet was served on the applicant

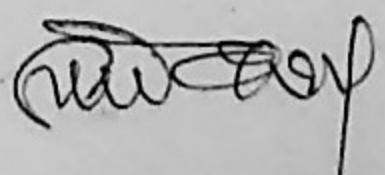


for unauthorized absence from the station whereas the applicant was spared by the respondents as he was transferred on request from Sone nagar to Mughalsarai and he resumed duty at Mughalsarai and he was not on unauthorized absence. That he was spared from Sonenagar on 4.7.99 and at Mughalsarai he fell ill and was admitted in the Railway hospital and after being fit, when he tried to joint duty at Mughalsarai, he was refused. The respondents, instead of admitting all this, denied the very fact that the applicant was ever appointed as a Substitute Group D employee vide appointment letter dated 15.12.1997. As per direction of the Tribunal in O.A. No.1655/2004 dated 10.1.2005, the respondents decided the representation of the applicant dated 10.12.2002 by reasoned and speaking order and Annexure A-1 is the copy of the order passed on the representation of the applicant. In this letter it has been alleged by the respondents that the applicant was never appointed as a Shuntman in Group D. That the person of the name of Lalman Yadav was never in the Operating department and the appointment letter was not issued. But the perusal of the judgment of O.A. 1655/04 Annexure A-7 shows that the respondents filed reply in the O.A. and it was alleged by the respondents that the applicant had in fact acknowledged all the findings of the enquiry officer on 1.10.99 and preferred no reply within the time allowed by the disciplinary authority, whereupon, by letter dated 17.12.99, he was given one more chance to submit reply. Even then the applicant did not submit any reply to the finding of the enquiry officer. In the circumstances



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Shri K.P. Singh, the respondents' counsel submitted that the applicant cannot raise any grievance against the order of termination if any. In the earlier O.A., a different defence was taken on the part of the respondents. It was not disputed in the earlier O.A. in their counter reply that the applicant was never appointed as a Group D substitute. But it has been alleged that some charge sheet was served to the applicant and the applicant accepted the finding of the enquiry officer. A reply was called from the applicant against the finding of the enquiry officer and no reply was submitted by him and accordingly he was terminated. Whereas, in the present case, entirely different case has been taken by the respondents that he was not a railway employee. He was never appointed as a Group D substitute Shuntman and the documents filed by the applicant like appointment letter etc. are forged documents. But these facts were not alleged in the earlier litigation and now the respondents are estopped from disputing this fact. When there is admission of the respondents that he was a railway employee and disciplinary enquiry was initiated against him for unauthorized absence, but no reply was submitted by him, the services were terminated, under these circumstances it will not be justified to place reliance on the contention raised by the respondents. From the documents as well as from the own case of the respondents in O.A. 1655/04 it has been established that the applicant was a railway employee and he faced certain enquiry. It is a different matter whether the applicant availed all the remedies available to him against the order of termination. However, the



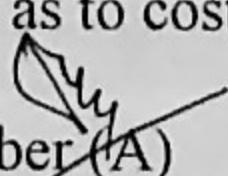
Tribunal, in the earlier O.A., after considering all the facts and circumstances, directed the Senior Divisional Operating Manager, E.C. Railway, Mughalsarai to consider and decide the representation of the applicant dated 20.10.2002 and 23.12.2003 by a reasoned and speaking order. Instead of passing any order on the representation, the respondents preferred to deny altogether the appointment of the applicant on the post of substitute Group D. Because the respondents have not alleged that the applicant faced a departmental enquiry for misconduct, hence we are required to see whether all the alternative remedies available to the applicant had been availed or not. Whether the applicant preferred an appeal against the order of termination. When the respondents are disputing the very appointment of the applicant, and it is established from the facts and circumstances that the applicant was a group D employee, hence we have only to decide whether there was any sufficient ground for his termination and whether the applicant had availed all the remedies, but nothing has been alleged by the respondents in this connection whereas the respondents in the earlier litigation had not disputed this fact that the applicant was not a railway employee, rather the documents filed by the applicant were forged and now the respondents cannot deny this fact.

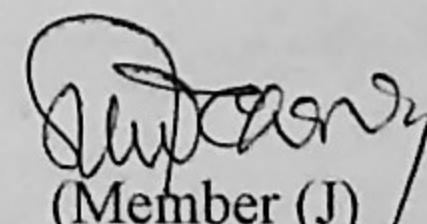
10. Hence, from the facts and circumstances of the case it has been established that the applicant was appointed as a Group D employee in the Railways and was posted at Sone Nagar in Mughalsarai Division and thereafter he was transferred on request

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from Sone Nagar to Mughalsarai and he resumed duty at Mughalsarai. Without following proper procedure and without affording any opportunity of showing cause, the services of the applicant had been terminated and this is an illegal act on the part of the respondents. The applicant had not been permitted to resume duty at Mughalsarai on the post on which he has come on transfer from Sone Nagar and the representation was also not decided by the respondents properly. Hence the order dated 25.4.2005 deserves to be quashed and the O.A. deserves to be allowed.

11. The O.A. is allowed. The order dated 25.4.2005 is quashed and the respondents are directed to permit the applicant to resume duty in Group D category. As the applicant has not performed any duty during this period, hence he will not be entitled to any emoluments of this period. However, he will be entitled for fixation of salary and seniority notionally and from the date when the applicant resumes duty, he will be entitled for salary. The respondents are directed to comply with the order within a period of 3 months from the date when the certified copy of this order is produced before them. The applicant shall produce the certified copy of this order before the respondent No. 2 and 3 at the earliest. No order as to costs.


Member (A)


(Member (J))

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