CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 69/93, 254/93, 255/93, 256/93, 257/93,
~~T.A.NO.~~ 258/93, 259/93, 261/93, 262/93, 263/93,
264/93, 265/93, 297/93.

DATE OF DECISION 16.7.1998

Ramkrupal Jagannath & Ors. Petitioner s

Mr. K.K. Shah, Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. P.C. Kannan, Judicial Member.

O.A.No. 69/93

1. Ramkrupal Jagannath
2. Omprakash Jagai
3. Tarasing Maniram
4. Ramjanak Ramsharan
5. Mahendra R. Tivari
6. Ramanbhai Mansing
7. Bhupendrasing Lalman
8. Bharatsing Ratansing
9. Jagdishchandra Dhuliram
10. Ganeshlal Paragdin
11. Ramanlal M. Mahavar
12. Devising A. Bamaniya
13. Adhyaprasad Shobhanath
14. Hanaraj Udayanarayansing
15. Jamilludin Nijammudin
16. Radheshyam M. Mahavar
17. Nandkishor Fatesing.

O.A.No. 254/93

Nandkishor Fatehsing
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Dist: Panchmanals.
Residential address:
Quarter No.7
Godi Road,
Nr. Kailash Mill
Dahod - 389 151
Dist: Panchmahals.

O.A.No. 255/93

Bharatsing R
Khalasi, working under
Chief Workshop Manager
Western Railway, Dahod
Dist. Panchmahals
Residential address
C/o. Devisinh A. Bamaniya
Moti Sarsi
PO Muvaliya, Ta. Dahod
Dist. Panchmahals.

O.A.No. 256/93

Ram Janak R
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod
Dist. Panchmahals
Residential Address
Qtr.No.605/G
'D' Site Area
PO. Freelandgunj 389 160
Dahod, Dist:Panchmahals.

.... 3/-

O.A.No. 257/93

Jamiluddin N. Shaikh
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod
Dist: Panchmahals
Residential Address:
Block No. 395/A
Godhra Road Area
PO. Freelandgunj 389 160
Dist: Panchmahals.

O.A.No. 258/93

Bhupendra Lalman Sharma
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Dist. Panchmahals
Residential address:
B/h Mission Hospital
Ambica Colony,
Dahod, Dist. Panchamahals.

O.A.No. 259/93

Jagdishchandra D
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Dist: Panchmahals.
Residential address
Rly. Qtr. No. 655/D
Din Rasta Area
PO Freelandgunj
Dahod 389 160
Dist. Panchmahals.

O.A.No. 261/93

Hansrajsingh U.
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Dist. Panchmahals.
Residential Address:
Qtr.No. 294/H
Dhobighat Area
PO Freelandgunj
Dahod 389 160
Dist. Panchmahals.

O.A.No. 262/93

Ganeshlal Pragdin
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Resi: Block No.21/A
Shriram Colony, Godhra Road Area,
At. & PO Dahod
Dist: Panchmahals.

..... 4/-

O.A.No. 263/93

Adhyaprasad S
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Dist: Panchmahals.
Residential Address:
321/C, 'D' Site Area
Freeland Gunj
Dahod 389 161
Dist: Panchmahals.

O.A.No. 264/93

Ramanbhai Mansing
Khalasi, working under
Chief Workshop Manager
Western Railway, Dahod,
Dist: Panchmahals
Residential address:
Moti Sarasi - Rabdal
Patelia Falia
PO Muvaliya
Ta. Dahod,
Dist: Panchmahals.

O.A.No. 265/93

Radheshyam Mulia
Khalasi, working under
Chief Workshop Manager,
Western Railway, Dahod,
Dist Panchmahals.
Residential Address:
Narsinh Colony, Godhra Road,
Chandan Chawal, Ta. Dahod
Dist: Panchmahals,
At. Dahod.

O.A.No. 297/93

Devisingh Bamania
Khalasi, working under
Chief Workshop Manager
Western Railway, Dahod,
Dist: Panchmahals.
Residential address:
Moti Sarsi
PO Muvalia 389 151
Ta. Dahod,
Dist: Panchmahals. ..... Applicants.

(Mr. K.K. Shah, Advocate for the Applicants)

..... 5/-

V E R S U S

1. Union of India, through its
General Manager, Western Railway,
Churchgate, Bombay.

2. Chief Workshop Manager,
Western Railway, Dahod,
Dist. Panchmahals.

3. Chief Workshop Engineer
Headquarter Office
Western Railway, Churchgate,
Bombay. ..... Respondents

(Mr. N.S. Shevde, Advocate for the Respondents)

ORAL JUDGMENT

O.A.No. 69/93, O.A.No.254/93, O.A.No.255/93,
O.A.No.256/93, O.A.No.257/93, O.A.No.258/93,
O.A.No.259/93, O.A.No.261/93, O.A.No.262/93,
O.A.No.263/93, O.A.No.264/93, O.A.No.265/93,
O.A.No.297/93.

Date: 16-7-1998.

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

As all these O.As involve the same issues and as the same relief has been sought for, we propose to dispose of all these O.As by a common order.

2. We have heard Mr. K.K. Shah for the applicants and Mr. N.S. Shevde for the Railway Administration.

3. The applicants state that they were initially engaged as casual labourers under the Railways in different places from 1983 to 1987. They were conferred with temporary status and were subsequently regularised. While granting temporary status leading to regularisation, the Railway Administration had acted on the basis of the

service card produced by them as casual labourers. These service cards stated that they had worked as casual labourers in Valsad in respect of some of the applicants and Abu Road in respect of others. Subsequent to regularisation, an intimation was received from the concerned officers in Valsad and Abu Road (from where the service card is supposed to have been procured) to the effect that no such card was issued. The Railway Administration on the basis of this report took the view that prima facie the service card was bogus and ordered an enquiry. A charge sheet was issued in April 1988 and an enquiry was conducted. The Enquiry Officer held the charges to be proved and held them guilty of serious misconduct. The disciplinary authority accepted the findings of the Enquiry Officer and inflicted the penalty of removal from service. This is challenged in the present O.As.

4. Mr. K.K. Shah, who represents all the applicants submits that the proceedings have been vitiated on various grounds. He states that it is not the case of the applicants that they had worked in Valsad and Abu Road. Their contention was that they had worked in Dahod Workshop and the service card was issued from Dahod Workshop by the concerned senior Railway officers at the relevant time. Mr. Shah submits that these cards had not been forged by any of the applicants as they were handed over to them by senior Railway officials. He says that during the course of the enquiry the applicants had reiterated this contention and requested the Enquiry Officer

to examine the concerned Railway officers who according to them gave them the service card namely; S/shri.R.P. Madan, P.D.Mishra, P.N. Mishra and Phoolsinh. The enquiry officer however rejected this request holding that their examination would not be relevant. Mr. Shah says that this rejection by the enquiry officer has resulted in serious miscarriage of justice and the main defence of the applicants that the cards were given by the senior Railway Officers could not be established on account of the refusal of the enquiry officer. He further contends that had they been summoned, the applicants would have been able to put across their case effectively and could have established their stand that the cards were issued to them by senior officers.

Mr. K.K. Shah goes on to submit that the disciplinary authority was the Chief Works Manager and at the relevant time when the applicants claim that they had got the cards from that office, the Workshop was under the charge of the Deputy Chief Mechanical Engineer and the same has since been redesignated as Chief Works Manager. He states that the disciplinary authority has thus been both the prosecutor and the judge. Mr. Shah also refers to the letter from the office of the General Manager dated 8.4.94 addressed to Dy.C.P.M., Railway Electrification, Baroda (Ann.A-11 in O.A.69/93) where the General Manager had given post-facto approval in regard to 62 casual labourers who had secured employment on the basis of fake-card as fresh face casual labour. In particular, it was

observed in that order that there was no point in trying to disengage these casual labourers at this distant date. This letter proceeds to state that since they have secured employment through wrongful means they should not be eligible for benefit of service over as others who have been engaged on genuine grounds and the latter should rank senior to them. Mr. Shah says that these casual labourers are different from the present set but the same principle could have been applied to the present applicants. Viewed from this angle and the letter of the G.M. the applicants should have been reengaged despite the allegation that service card produced was not genuine.

Mr. Shah also refers to a recent decision of this Tribunal in O.A. 329/90, disposed of on 13.11.1997 in respect of persons who were similarly situated. In that case the Tribunal had held that without examining any of the witnesses the authorities came to the conclusion that the charge is proved. The Tribunal quashed that finding. It also observed that it was not worthwhile to refer the case back to the enquiry officer in view of the time lapse and directed the Department to reengage them but denied the benefit of backwages while stating that the period from the date of removal till the date the applicant is reinstated shall count for purpose of continuity in service for pension. Mr. Shah suggests that the present O.As also may be disposed of on the same lines ordering reinstatement without backwages and according to him, it is not necessary to remit the matter back to the enquiry officer.

5. Mr. Shevde resists the applications. He says that the legality of the charge sheet had been gone into earlier in O.A.202/93 and the Tribunal had held such a charge sheet issued by the Assistant Works Manager is legal and this issue stands concluded with that judgment. The incumbent of the post of Chief Works Manager, who is disciplinary authority, is not the same person, who held charge of Dahod Workshop as Deputy Chief Mechanical Engineer at the relevant time. He also says that the letter from the office of the General Manager dated 8.4.94 was in respect of some other set of casual labourers. The Standing Counsel says that it is possible that no enquiry was held against them. It is not known whether an enquiry was held and they were found guilty in the absence of the details regarding the casual labourers referred to in that letter. Mr. Shevde says that it is not possible to conclude that the same ~~proceedings~~ should be followed in respect of the present applicants. Mr. Shevde goes on to submit that the facts in O.A.329/90 can be distinguished from the present case. In that O.A. the witnesses listed in the charge sheet were not examined and the Tribunal then held that the enquiry proceedings were vitiated but so far the present applicants are concerned, the enquiry was duly held and opportunity was given to the applicants to cross examine the witnesses who were examined. He contends that there is no procedural irregularity in conducting the enquiry.

Mr. Shevde also says that the applicants have made a grievance that four persons namely; S/Shri.R.P.

Madan, P.D.Mishra, P.N. Mishra and Phoolsinh were not cited as witnesses even though the applicants made a request that they should be summoned. He says that in some earlier court cases some of this present applicants had levelled certain allegations against Shri Madan but later on withdrew such allegations. In the circumstances, the enquiry officer might have held that it is not necessary to call Shri Madan & others for examination. Mr. Shevde however, ~~concedes~~ Concedes that this aspect has not been brought out in the order of the enquiry officer while rejecting the claim for summoning these persons as witnesses.

The Standing Counsel goes on to submit that in case the Tribunal finds that the failure to examine the witnesses has vitiated the proceedings the matter may be remitted back to the enquiry officer to proceed further from the earlier stage and to call them as witnesses. He relies in this connection on the decision of this Tribunal dated 4.8.1995 while disposing of O.A.202/93. For these reasons Mr. Shevde says that the applicants can not be granted the relief sought for.

6. We have carefully considered the submissions of both sides. The main point urged by Mr. K.K. Shah is that it is not the stand of the applicants that they have worked at the place as shown in the service card but that such a service card was issued by the senior Railway officers in Dahod Workshop where infact they had worked. On getting the report from the concerned officers in Valsad and Abu Road and they had not issued the service card, the Railways had gone on the

assumption that the service cards were bogus. However, it is not their claim that the applicants had forged or fabricated the cards. In fact the main defence of the applicant was that the cards were supplied by S/Shri R.P. Madan, P.D.Mishra, P.N. Mishra and Poolsinh. The applicants had made a specific request to summon them as witnesses so that they can substantiate their case. It is not clear as to the basis for the stand of the enquiry officer that the examination is not relevant when the applicants case rests on their assertion that the cards were supplied to them by these officers and obviously they would be important witnesses. We are also not aware of the details of the affidavit referred to by Mr. Shevde in respect of Shri Madan. In any case apart from Mr. Madan they were other persons whom the applicants wanted to be summoned. The fact that some allegations made in earlier cases were later on withdrawn cannot be a valid ground for refusing to summon these people in the face of catagorical assertion of the applicants that they had been issued service cards by them Railway Admn. In any case the reason given by the enquiry officer to refuse to summon this people was that he hold that they were not relevant which finding is obviously incorrect. The Railway's stand is that the service cards are not genuine and it is not their contention that the applicants had in any way forged or fabricated cards. When the applicants claimed that

this had been issued to them by the Railway Officers and made a request to summon them as witnesses, it was necessary to call them so as to afford an opportunity to the applicants to substantiate their case.

7. In the circumstances, we hold that the refusal to call these four persons as witnesses has resulted in serious prejudice to the defence of the applicants and this alone is sufficient reason to hold that the penalty of removal from service cannot be sustained. In the normal course we would have remanded the matter back to the enquiry officer for continuing with the enquiry by summoning those persons and to give an opportunity to the applicants to substantiate their case. We note that the charge sheet was issued in 1988 and the present O.As have been filed in 1993 and a number of years have passed since then. We are informed by Mr. Shevde that one of them Mr. P.D. Mishra is no more. We also note that while disposing of O.A. 329/90 on 13.11.97 the Tribunal held that in view of the facts and circumstances of the case and the time factor involved, it is not necessary to refer that case to the enquiry officer. It is true that in O.A. 202/93 the matter was remitted back to the enquiry officer but in that case the O.A. was filed in 1993 and the judgment was rendered on 4.8.95 more than about three years back. In the circumstances we are inclined to agree with the suggestion of Mr. K.K. Shah that at this distance of time it will not be worthwhile to remand the matter back to the

..... 13/-

enquiry officer.

8. In the facts and circumstances of the case and following the decision of the Tribunal in O.A.329/90 we are of the view that it is not necessary to remand the case back to the enquiry officer and hold that the ends of justice will be met by setting aside the orders of disciplinary authority and the appellate authority as bad in law. We direct accordingly and further direct the respondents to reinstate the applicants as early as possible and in any case not later than eight weeks from the date of receipt of a copy of this order. We also hold that the applicants are not entitled to any back wages but the period from the date of removal of the applicants till the date they are reinstated shall count for the purpose of continuity in service for pension.

9. With the above directions, the O.As are finally disposed of with no order as to costs.

Sd/-

Sd/-

(P.C. Kannan)
Member(J)

(V.Ramakrishnan)
Vice Chairman

तैयार करनेवाला
Prepared by:
मिलाने वाला
Compared by:

vtc.

M.A. S t.736/98 in O.A./265/93

DATE	OFFICE REPORT	O R D E R
26.10.98		Mr. Shevde says that he will remove the office objections within a week. Adjourned to 06.11.98. (V. Ramakrishnan) Vice Chairman
		hki
6.11.98		Mr. Shevde shall remove office objections within a fortnight. Adjourned to 8.12.1998. (P.C.Kannan) Member(J) (V.Ramakrishnan) Vice Chairman
		vtc.
08.12.98		We are informed ~~xhxx~~ by Mr. Shevde that a copy of the MA has been given to Mr. K.K. Shah. We waive the other office objections. Registry to give a regular number. Mr. Shevde submits that there is already a stay granted by the High Court and as such MA/814/98 seeking extension of time is not necessary and does not press the same. MA/814/98 disposed of as not pressed. (P.C. Kannan) Member(J) (V. Ramakrishnan) Vice Chairman
		hki

M.A. St.736/98 in O.A./265/93

DATE	OFFICE REPORT	ORDER
26.10.98		Mr. Shevde says that he will remove the office objections within a week. Adjourned to 06.11.98. (V. Ramakrishnan) Vice Chairman hki
6.11.98		Mr. Shevde shall remove office objections within a fortnight. Adjourned to 8.12.1998. (P.C.Kannan) Member(J) (V.Ramakrishnan) Vice Chairman vtc.
08.12.98		We are informed ~~xxxx~~ by Mr. Shevde th a copy of the MA has been given to Mr. K. Shah. We waive the other office objection Registry to give a regular number. Mr. Shevde submits that there is already a stay granted by the High Court and as such MA/814/98 seeking extension of time is not necessary and does not press the same. MA/814/98 disposed of as not pressed. (P.C. Kannan) Member(J) (V. Ramakrishnan) Vice Chairman hki

5798

3/12/98

Submitted Hon'ble Vice Chairman &
Hon'ble Mr. V. Radhakrishnan, Member(A)
Hon'ble Mr. P.C. Kannan, Member(J)
~~Hon'ble Mr. Laxman Jha, Member(J)~~

Certified Copy of order dtd 15/10/98 in
~~CA~~/Spl. CA No. 7946 & — of 1998
passed by the ~~Supreme Court~~/High Court against the judgement/order passed by this Tribunal in OA/265/93 is placed for perused please.

SO(J) 4-12-98 DR(J)

Hon'ble Vice Chairman
~~Hon'ble Mr. V. Radhakrishnan, Member(A)~~
Hon'ble Mr. P.C. Kannan, Member(J)
~~Hon'ble Mr. Laxman Jha, Member(J)~~

WRIT

20928

Dispatch No.
(TO BE RETURNED TO THIS COURT/TO BE SERVED ON RESPONDENT NO.)

(TO BE RETURNED TO THIS COURT DULY EXECUTED)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Interim stay & Execution ORDER XLI CPC
Special Civil Application No 7946 of 98
Fixed on : 01/12/98
District AHMEDABAD

UNION OF INDIA & 2 Petitioner(s) Advocate
MR JC SHETH

Vs
RADHESHYAM MULIA Opponent(s).

To
1. THE REGISTRAR
CENTRAL ADMINISTRATIVE
TRIBUNAL, AHMEDABAD BENCH.

UPON Reading the petition of the abovenamed petitioner(s) presented this Court through his/her/their Advocate MR JC SHETH praying that pending hearing and final disposal of this petiton, to stay the implementation of the judgment and ordser passed by the Central Administrative Tribunal, Ahmedabad in O.A. No.265/93 on 16/7/98 and etc.....

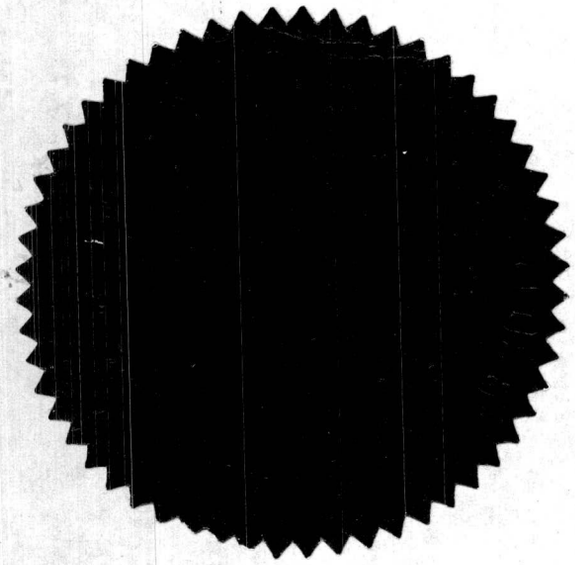
And Whereas Upon hearing MR JC SHETH, Advocate for the petitioner, Court passed the following order :-

CORAM:- C.K.THAKKER & A.M.KAPADIA,JJ.(Dt.08.10.1998.)

"Rule. Ad-interim Relief against the implementation of the judgment of the tribunal. Notice as to ad interim relief returnable on 1st December, 98."

Issue.
23/11
23/11/98

It is hereby accordingly ordered that, the implementation, execution and operation of the judgment and order dated 16.7.1998 in O.A. No 265 of 1993, passed by you, be and are hereby STAYED, pending hearing of notice as to ad interim relief returnable on 1st December, 1998.
Witness K.G.BALAKRISHNAN, Esquire Chief Justice at Ahmedabad aforesaid this 08th day of Oct, 1998



Received
23/11/98

By the Court.
26/10
Deputy Registrar

This 15th day of Oct 1998

~~Deputy Registrar~~ Foreign COPY
Dy. Registrar

WRIT 2926 ✓ To be retai

Dispatch No.
(TO BE RETURNED TO THIS COURT/TO BE SERVED ON RESPONDENT NO.

(TO BE RETURNED TO THIS COURT DULY EXECUTED)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Interim stay of Execution ORDER XLI CPC
Special Civil Application No 7946 of 98
Fixed on : 01/12/98
District AHMEDABAD

UNION OF INDIA & 2 Petitioner(s) Advocate
MR JC SHETH

Vs
RADHESHYAM MULIA Opponent(s)

To
1 THE REGISTRAR
CENTRAL ADMINISTRATIVE
TRIBUNAL, AHMEDABAD BENCH

UPON Reading the petition of the abovenamed petitioner(s) presented this Court through his/her/their Advocate MR JC SHETH praying that pending hearing and final disposal of this petiton, to stay the implementation of the judgment and ordser passed by the Central Administrative Tribunal, Ahmedabad in O.A. No.265/93 on 16/7/98 and etc.....

And Whereas Upon hearing MR JC SHETH, Advocate for the petitioner Court passed the following order :-

ORAM:- C.K THAKKER & A.M.KAPADIA,JJ (Dt.08.10.1998)

"Rule Ad-interim Relief against the implementation of the judgment of the tribunal Notice as to ad interim relief returnable on 1st December, 98."

It is hereby accordingly ordered that, the implementation, execution and operation of the judgment and order dated 16.7.1998 in O.A No. 265 of 1993, passed by you, be and are hereby STAYED, pending hearing of notice as to ad interim relief returnable on 1st December, 1998
Witness K.G.BALAKRISHNAN, Esquire Chief Justice
at Ahmedabad aforesaid this 08th day of Oct, 1998

By the Court
Sd/- M A Sapra
Deputy Registrar

This 15th day of Oct 1998

~~Deputy Registrar~~ True Copy
M Sinha 26/10
Dy. Registrar

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No. OA/865/93 of 19 .

Transfer application No. Old Write Pet. No. .....

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 06/8/98

Countersigned.

Section Officer/Court Officer.

Signature of the Dealing Assistant.

MGIPRRND—17 CAT/86—T, S, App.—30-10-1986—150 Pads.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE OA/265/93

NAME OF THE PARTIES Radheshyam Mulia

VERSUS

U.O.I & ors

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