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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.352 OF 1992
Cuttack, this the 25th day of January 1999

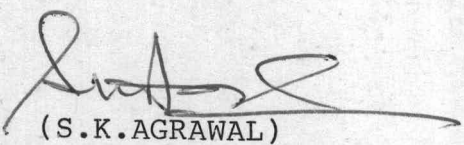
Muralidhar Biswal Applicant

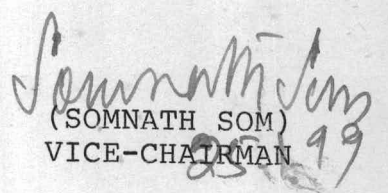
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K.AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

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Muralidhar Biswal
s/o late Sukadev Biswal
earlier working as Substitute
Token Porter
under Chief Yard Master, Khurda,
Khurda Road Division,
South Eastern Railways,
Khurda Road, Jatni, District-Puri
a permanent resident of village Marthapur, PO-Naraj,
District-Cuttack Applicant

By the Advocate

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Shri Biswajit
Mohanty

Versus

1. Union of India
represented through General Manager
South Eastern Railway
Garden Reach, Calcutta, West Bengal.
2. Divisional Railway Manager,
Khurda Road Division,
South Eastern Railways,
Khurda Road, Jatni, Puri.
3. Senior Divisional Personnel Officer,
Khurda Road Division,
South Eastern Railways,
Khurda Road, Jatni, Puri.
4. Assistant Personnel Officer,
Khurda Road Division, South Eastern Railways,
Khurda Road, Jatni, Puri.
5. Chief Personnel Officer,
South Eastern Railways, Garden Reach, Calcutta,
West Bengal.
6. Chief Yard Master,
Khurda Road Division,
South Eastern Railway,
Khurda Road, Jatni, Puri.
7. Yard Master, Talcher Railway Station,
Talcher, Dist.Dhenkanal

By the Advocate

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Respondents
Shri B.Pal.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the notice dated 8.5.1989 (Annexure-A/2) issued to him by Assistant Personnel Officer, Khurda Road, and the order dated 13.3.1990 (Annexure-A/4) rejecting his representation submitted in response to the notice at Annexure-A/2. There is also a prayer that respondent nos.2,3 and 4 be directed to reinstate the applicant as Substitute Token Porter with effect from the date from which he was illegally disengaged, with all consequential benefits.

2. The facts of this case, according to the applicant, are that in order dated 1.3.1982 (Annexure-A/1) Divisional Personnel Officer, Khurda Road, directed Yard Master, Talcher, to engage the applicant as Substitute Token Porter as per casualties from time to time. Accordingly, the petitioner joined as Substitute Token Porter and worked to the satisfaction of the authorities. His case is that he had all along been engaged against regular, permanent and temporary posts where vacancies arose because of leave or otherwise. In 1983 he acquired temporary status. In 1986 he was transferred from Talcher to Bhadrak Railway Station. According to him, the fact of transfer shows that by that time he had acquired temporary status. In December 1987 he was transferred to Khurda Road Railway Station to work under Chief Yard Master, Khurda Road Division. He worked there from 26.12.1987 to 8.2.1988 against vacancies that arose from time to time in Khurda Road Railway Station. All on a sudden on 9.2.1988 he was disengaged and his services were not utilised in spite of existence of casualties. On 8.5.1989 Assistant Personnel Officer, Khurda Road, issued the notice at Annexure-A/2 in which it was alleged that the applicant had tried to cheat Railway administration by falsely claiming that he was a substitute under Chief Yard Master. He had produced forged letter and obtained substitute engagement for short period on two

occasions. On an enquiry by two Assistant Officers, it has been established that the applicant was not a genuine substitute of the Operating Branch. By producing fake authority, he managed to engage himself as a substitute under Chief Yard Master, Khurda Road. Accordingly, it was felt that the applicant was not a fit person for engagement as a substitute. He was, therefore, called upon to represent his case so that his reply would be taken into consider before passing final orders. The applicant submitted his reply in his letter dated 27.5.1989 (Annexure-A/3). According to the applicant, along with his reply, he submitted the wage certificates issued by Yard Master, Talcher. But on 15.6.1989 he was informed by the authorities that he had failed to enclose the certificate for the period he worked at Talcher. The applicant submitted copies of all certificates once again. Despite repeated contacts, no final order was passed on his representation. The applicant made further representations on 26.7.1989, 17.11.1989 and again on 3.1.1990. Ultimately in the impugned order dated 13.3.1990 (Annexure-A/4) the representation of the applicant was rejected. The applicant submits that the person who had issued the notice at Annexure-A/2 had in the meantime got promotion as Senior Divisional Personnel Officer, Khurda Road Division (respondent no.3) and rejected his representation. The applicant submits that while rejecting the representation in the order at Annexure-A/4, respondent no.3 has held that the petitioner had submitted an application to Chief Yard Master, Khurda Road, without any date in December 1986 in which the applicant had stated that he had worked from 2.7.1980 to 15.12.1987 under D.T.I., Bhadrak. It has been further held that on verification it was found that the applicant had never worked anywhere nor any payment was ever made to him. The applicant states that he had never submitted a letter in December 1986 to Chief Yard Master, Khurda Road and the impugned order at Annexure-A/4 was passed on the basis of a non-existent letter. Thereafter the applicant met respondent no.3 and produced all necessary documents.

According to him, his case was taken up for consideration, but no final orders were passed. He submitted a representation on 3.10.1991 to General Manager, South Eastern Railway, who directed respondent no.5 in December 1991 to conduct a special enquiry into the matter and to submit a report, but no further action was taken. In the context of the above facts, the petitioner has come up with the prayers referred to earlier.

3. The respondents in their counter have submitted that the applicant managed to be engaged as a Substitute Token Porter under Chief Yard Master, Khurda Road, in 1987-88 by producing a forged letter of authority. He was engaged in four different spells from 26.12.1987 to 25.1.1988. In the letter of authority the signature of Shri R.R.Majhi, the then Assistant Personnel Officer, was forged. This forgery was detected when the official records were checked for preparing the bills. Immediately a fact finding enquiry was ordered and Shri A.K.Mohanty, the then Assistant Personnel Officer and Shri A.S.Ramayya, the then Assistant Operating Superintendent conducted the enquiry. It was established in the enquiry that the letter of authority was not signed by Shri R.R.Majhi, the then Assistant Personnel Officer. It was then decided to terminate the engagement of the applicant and the same was discontinued. During the period of engagement, payment was also not made because this engagement was done on the basis of forged letter of authority. The applicant was served with a showcause notice on 8.5.1989 vide Annexure-A/2 to represent his case before passing final orders. The applicant submitted his reply but without enclosing copies of the engagement certificates. He was again asked on 15.6.1989 to submit engagement certificates. On 23.6.1989 the applicant submitted a xerox copy of the engagement certificate that he worked under Yard Master, Talcher, from 18.3.1981 to 30.3.1981 and from 2.4.1981 to 13.4.1981. After verification of official records, it was found that the engagement certificate submitted by the applicant is a forged one and no such person in the name of the

applicant was engaged at Talcher and no wages were drawn in his favour. As the engagement of the applicant under Chief Yard Master, Khurda Road, was made on a fictitious basis, it was held that he was not entitled to payment for such engagement. The applicant was accordingly informed in the order at Annexure-A/4. The respondents have stated that the alleged Annexure-A/1 is not a genuine one and has not been issued by Divisional Personnel Officer, Khurda Road. It is further averred that no office records are there to prove the engagement of the applicant at Talcher and no wages were drawn and paid to him for such engagement. As the applicant was never engaged at Talcher, the question of his acquiring temporary status does not arise. It is further alleged that the applicant was never transferred from Talcher to Bhadrak. The applicant has also not produced any document in support of this averment. An office order for engagement of the applicant as substitute under Chief Yard Master, Khurda Road, was produced to Chief Yard Master and the applicant got engagement in different spells on the basis of the said letter of authority which was found to be a forged one. During enquiry, Shri R.R.Majhi, the then Assistant Personnel Officer, whose signature had been forged, had denied that he had signed that letter. The respondents have further stated that it was not obligatory on their part to inform the applicant about the fact finding enquiry. Before final orders were passed, the showcause notice was issued to the applicant and his reply was taken into consideration. The respondents have further denied that they have assured that his case would be reconsidered. It is further submitted by the respondents that the applicant stated in a letter submitted to Chief Yard Master, Khurda Road, that he worked under D.T.I., Bhadrak, from 2.7.1980 to 15.12.1987. This application is not available in the records of Chief Yard Master, Khurda Road. The statement of the applicant that he worked from 2.7.1980 to 15.12.1987 under D.T.I., Bhadrak, is contradictory to his claim that he worked at Talcher from 18.3.1981 to 30.3.1981. All these, according to the respondents, prove that the applicant

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had obtained his engagement on the basis of forged documents. On the above grounds, the respondents have opposed the prayers of the applicant.

4. The applicant has filed a rejoinder in which he has submitted that in the fact finding enquiry he was never noticed and no handwriting expert was called in to confront the alleged forged letter of authority. It is further stated that Annexure-A/2 makes it clear that the authorities had already decided that the applicant would not be engaged as a substitute and the so called notice was a mere eye-wash. Principle of natural justice has been violated in the enquiry. The applicant has reiterated that he has worked at Talcher in different spells from 18.3.1981 to 13.4.1981 vide Annexure-A/6. Similarly, vide Annexures A/7, A/8, A/9 and A/10, the applicant has been certified to have worked in different spells from 2.4.1981 to 21.7.1981, again from 27.8.1981 to 21.12.1981, again from 4.1.1982 to 21.9.1982 and lastly from 15.5.1982 to 20.8.1983. The applicant has also filed an affidavit stating that the document under Annexure-A/1 was received by him from Assistant Personnel Officer, Khurda Road Division, on 6.3.1981 and on the basis of this document he was engaged as a Substitute Token Porter at Talcher.

5. We have heard Shri Biswajit Mohanty, the learned lawyer for the petitioner, and Shri B.Pal, the learned Senior Counsel appearing on behalf of the respondents, and have also perused the records. The learned lawyer for the petitioner has filed written submission which has also been taken note of.

6. The learned lawyer for the petitioner has challenged the action of the respondents in disengaging the applicant and in issuing the letters at Annexures A/2 and A/4 on different grounds which are discussed below. Firstly, it has been stated that the fact finding enquiry held by the two Assistant Officers was conducted behind the back of the petitioner who was never noticed in that enquiry and thereby principles of natural justice have

been violated. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of K.I. Shephard and others v. Union of India and others, AIR 1988 SC 686, in which it has been held that even when a State agency acts administratively rules of natural justice would apply. In such cases, a participatory enquiry is a must so that the person against whom the enquiry is conducted has an opportunity to answer the case against him. In the instant case, the fact finding enquiry having been conducted behind the back of the petitioner, it is submitted that further action taken by the respondents in pursuance of that enquiry report is ab initio void and must be struck down. The second case relied upon by the learned counsel for the petitioner is D.K. Yadav v. M/s J.M.A. Industries Ltd., JT 1993 (3) SC 617, in which the Hon'ble Supreme Court has laid down that the order of termination of service of an employee results in civil consequences of jeopardising not only his livelihood but also career and livelihood of his dependants and therefore, taking any action putting an end to the tenure of an employee, fair-play requires that a reasonable opportunity to put forth his case is given and the domestic enquiry is conducted complying with principles of natural justice. In the instant case, it is noted that after the report of the fact finding enquiry was available with the authorities in which it was found that the petitioner had produced a forged letter of authority, notice was issued to the petitioner vide Annexure-A/2 in which the case against him was squarely put to him and he was asked to submit his explanation so that it can be taken into consideration before final orders are passed. This, to our mind, is sufficient compliance with the rules of natural justice. The fact finding enquiry which preceded issuing of this notice was obviously with a view to establish the facts as to whether the document is a genuine one or not. At that stage, it was not necessary to notice the applicant because

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the purpose of enquiry was to determine if prima facie the documents produced by the applicant were genuine or forged. Before passing final orders opportunity has been given to the applicant to represent his case and therefore, it cannot be held that principles of natural justice have been violated. This contention of the learned counsel for the petitioner is, therefore, rejected.

7. The learned counsel for the petitioner has also submitted that the so called opportunity given to the applicant to submit his explanation in response to the notice at Annexure-A/2 is an eye-wash because from Annexure-A/2 it is clear that the respondents had already taken a decision that the applicant was not a fit person for engagement as a substitute. In the face of it, the action of the respondents in asking the applicant to submit his explanation is merely for the purpose of upholding a decision already taken. It is also submitted that the person who issued the notice at Annexure-A/2 had, in the meantime, got promotion as Senior Divisional Personnel Officer and he passed final orders on the explanation submitted by the applicant. As Annexure-A/2 clearly states that the explanation of the applicant was called for before passing final order on the report of enquiry, it was open for the respondents not to engage the applicant as substitute and therefore, disengagement of the applicant or rather his non-engagement against casual vacancies which arose from time to time after the forgery was detected and till final orders were passed cannot be found fault with. Because the fact finding enquiry prima facie established a case of forgery, it cannot be said that the respondents had finally decided to act against the applicant. He was asked in the notice to submit all documents which were in his possession in support of his claim. On his submitting copies of these documents, these were verified and were also found false and therefore, it cannot be said that obtaining the explanation of the applicant is a mere eye-wash. The fact that the person who had issued the showcause

notice had passed final orders on his representation does not in any way invalidate the final order at Annexure-A/4 and this contention must, therefore, be rejected.

8. The respondents in this case have made enquiry and have found that the claims made by the applicant regarding his prior engagement as substitute at Talcher and Bhadrak are false as well as contradictory and as he had obtained his engagement under Chief Yard Master, Khurda Road, on the basis of such forged documents, the respondents were within their rights not to engage him any further as substitute Token Porter. A similar case came before the Hon'ble Supreme Court in Union of India and others v. M.Bhaskaran, (1996) 32 ATC 94. There the Hon'ble Supreme Court held that the respondents have admittedly snatched employment in railway service of a casual nature by relying upon forged or bogus casual labour service cards. The unauthenticity of the service cards was clearly established on record of departmental enquiry. The Hon'ble Supreme Court held that it was a clear case of fraud on the employer. It was also held that once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of the employees were liable to be recalled and were at least voidable at the option of the employer concerned. On that basis the Hon'ble Supreme Court set aside the decision of the Ernakulam Bench of the Tribunal quashing the orders of removal from service passed against the respondents. In **M.Bhaskaran's case (supra)** no doubt departmental enquiries were held against the employees and thereafter the impugned orders of removal from service were passed. In the instant case, only after the fact finding enquiry prima facie established that the documents submitted by the applicant were forged ones, the petitioner was asked to show cause. As we have held that this does not invalidate the action taken by the respondents in any way. In view of this, we find that the applicant has not been able to make out a case entitling him to any of the reliefs claimed.

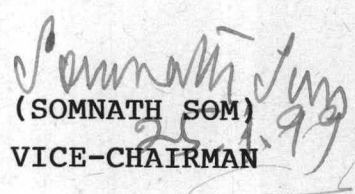
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9. In the result, therefore, the application fails and is rejected but, under the circumstances, without any order as to costs.

10. Before parting with this case, one aspect of the matter will have to be referred to. The respondents in paragraph 3 of their counter (page 2) have mentioned that for the period of engagement of the applicant under Chief Yard Master, Khurda Road, no payment was made to him because this engagement was done on the basis of misrepresentation by him cannot be countenanced because that would in effect mean the Railways getting the work from the applicant without making any payment to him. In view of this, it is ordered that for the period the applicant has admittedly worked under Chief Yard Master, Khurda Road, his wages should be drawn and paid to him. But such payment of wages will not entitle him to any claim for future appointment as substitute in view of what has been decided by us earlier.


(S.K. AGRAWAL)

MEMBER (JUDICIAL)


(SOMNATH SOM)

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VICE-CHAIRMAN

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