

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 177 OF 2000
Cuttack, this the 22nd day of March, 2001

Ch.P.Janardan Rao and others.... Applicants

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.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATHSOM)
VICE-CHAIRMAN
22.3.2001

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 177 OF 2000
Cuttack, this the 22nd day of March, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

1. Ch.P.Janardan Rao, T.No.756, son of late Rama Raju.
2. S.Mohan Rao, Token No. 348, s/o late S.Somulu
3. S.Someswara Rao, Token No. 314, s/o late S.Laxmi.
4. Santosh Kumar Sahu, Token No. 457, s/o late Birendra Sahu.
5. B.Nageswara Rao, Token No.475, s/o late B.Simachalam
6. M.Musalo Naidu, son of late M.Appa Rao.
7. M.Prakash Rao, Token No.1034, s/o L.M.Ramana Rao
8. D.Satish Kumar, son of L.Satya Rao
9. B.Govinda Rao, son of L.B.Ramno Rao, Token No.342.
10. Joga Rao, Token No.343, son of late Ramullu.
11. T.Divakar Rao, Token No.382
son of L.Baikuntha Rao.
12. L.Venkat Rao, Token No.340, son of L.Sita Ram
13. M.Venkat Rao, Token No.326, son of L.M.U.T.Rao
14. M.Satish Kumar, Token No. 390, son of L.M.Kannan
15. Indra Dev Thakur, Token No.
son of L.Titu Thakur.
16. Dinesh Prasad, s/o B.P.Srivastav
17. P.B.V.M.K.Raju, Token No. 321, son of L.R.C.Raju.
18. S.Srinivas Rao, Token No. 327,
son of L.Papa Rao
19. Rajiv Kumar Singh, son of Radhashyam Singh
20. Surendra Pal Singh, son of L.Haradip Singh
21. Dinesh Singh, son of L.Abhinath Singh
22. Sunil Kumar Singh, son of late Birch Nath Pd. Singh
23. Mudrika Thakur, son of late Mishri Thakur
24. Chotelal, son of Kanheya Prasad

25. B.Balkrishna, son of late B.Appal Naidu

26. D.Raghunath Rao, son of late D.Laxmi Narayan,

All are of village Madhusudan Palli, P.O/PS-Plant Site, Rourkela-13, Munsif/Tahasil-Panposh, District-Sundargarh

....

Applicants

Advocates for applicants - M/s

M.Maleswaram

R.N.Behera

Vrs.

1. Union of India, represented through G.M., S.E.Railway, Garden Reach, Calcutta, West Bengal.
2. Divisional Railway Manager, S.E.Railway, Chakradharpur, District-Singhbhum, Bihar.
3. Divisional Personnel Officer, S.E.Railway, Chakradharpur, Dist.Singhbhum, Bihar.
4. Senior Divisional Mechanical Engineer (Sr.D.M.E(D), B.N.D.M.), Diesel Bondamunda, District-Sundargarh, Orissa
5. Sr.Divisionl Electrical Engineer (R.R.S.), Bondamunda, P.S-Bondamunda, District-Sundargarh, Orissa

....

RESPONDENTS

Advocate for respondents - Mr.Ashok Mohanty

Sr.Panel Counsel(Rly).

MR. R.C. RAH A.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

JSom

JSom In this Application, the twenty-six petitioners have prayed for quashing the two orders dated 25.2.2001 at Annexures 3(B) and 3(C) dismissing them from service with immediate effect. They have also asked for reinstatement with arrears of salary and other service benefits.

2. The respondents have filed counter opposing the prayers of the applicants. No rejoinder has been filed. We have heard Shri M.Maleswaram, the learned counsel for the petitioners and Shri Ashok Mohanty, the learned Senior Panel Counsel (Railways) for the

respondents and have also perused the records.

3. The case of the applicants is that petitioner nos. 1 to 22 were appointed as Diesel Cleaners by Divisional Personnel Officer, Chakradharpur Division (respondent no.3) and posted to work under Sr.Divisional Mechanical Engineer, S.E.Railway, Bondamunda (respondent no.4) in Diesel Locoshed, Bondamunda. Applicant nos. 23 to 26 were similarly appointed and posted under Senior Divisional Electrical Engineer, S.E.Railway, Bondamunda (respondent no.5) to work in Electrical Locoshed. Their appointment orders at Annexures 1(A), 1(B) and 1(C). Before joining, on payment of requisite fees, they have been medically examined and found fit. The applicants have stated that applicant no.20 is working in Railways since 1995. Applicant nos.12,14,16,19 and 21 were employed in 1996, and applicant nos.13,15,17 and 18 are working in Railways since 1997, and the rest of the applicants have been appointed in 1998 and 1999 respectively. They have been working in their posts and getting their salary all these years. A news item was published in newspaper, PRABHAT KHABAR, alleging that the applicants and many others have secured their employment on bogus appointment orders and because of this, without any prior notice of disciplinary proceedings, the applicants have been dismissed from service in the impugned orders at Annexures 3(B) and 3(C). Against this background, the applicants have come up with the prayers referred to earlier.

4. The respondents in their counter have opposed the prayers of the applicants stating that these applicants had obtained employment by forging documents and after enquiry, they have been dismissed from service. It is not necessary to record the averments made by the parties in their counter as these will be referred to at the time of considering the submissions made by the learned counsel for the petitioners.

5. It has been submitted by the learned counsel for the petitioners and this has also not been denied by the respondents that prior to issuing of the dismissal orders, no disciplinary proceedings were initiated against the applicants. Thus, the sole point for consideration in this case is whether in the absence of any disciplinary proceedings, the two impugned orders of dismissal could have been legally issued. From the appointment orders enclosed by the applicants at Annexures 1(A), 1(B) and 1(C) it is seen that by the order dated 28.6.1999 at Annexure-1(A) ten persons were appointed in Group-D category on compassionate ground. Similarly, in order dated 12.11.1996 at Annexure-1(C) nine persons were given compassionate appointment in Group-D Category. In order dated 10.4.1999 at Annexure-1(B) two applicants have been appointed as Khalasi but their names have been included in the order at Annexure-1(A). From these it appears that nineteen of these applicants were appointed on compassionate ground. The respondents have stated that the applicants have not been appointed by the Divisional Personnel Officer at any point of time. The applicants had managed to get themselves engaged in the offices of respondent nos.4

5 on the basis of forged and concocted documents. They have denied that the Divisional Personnel Officer (respondent no.3) had ever issued any appointment order in respect of the 26 applicants for posting them to work under respondent nos. 4 and 5. They have stated that on the basis of these forged orders, respondent no.4 had erroneously issued the order of appointment. It is furtherstated that the applicants also fabricated medical memo with false rubber stamp and false signature of the officer under respondent no.3 and presented themselves before the Medical Superintendent, Bondamunda, who in turn, without verifying the genuineness of the medical memo, examined them for fitness and gave them the fitness certificates. Thereafter the applicants appeared before respondent nos. 4 and 5 with the office order purported to have been issued by respondent no.3 and got themselves engaged. They have further stated that after publication of the news about appointments having been made on false and forged documents, an enquiry was conducted and after verification of records in the offices of respondent nos.4 and 5 and the Medical Superintendent, Bondamunda as also the records in the office of respondent no.3, it was established beyond doubt that the appointments of these applicants were never processed and no appointment order was issued from the office of respondent no.3. Accordingly, in orders dated 25.2.2001 at Annexures 3(B) and 3(C) they were dismissed from service. We have considered the submissions made by the learned counsel of both sides carefully. Even though from the

JJm

appointment orders it appears that nineteen of the applicants were purportedly appointed on compassionate ground, the applicants have made no averment in their OA that they were wards of deceased or invalidated Railway employees and that they had applied for compassionate appointment and such compassionate appointment was given to them. The appointment order at Annexure-1(A) has been purportedly signed by Assistant Personnel Officer. The respondents have enclosed at Annexure-B the specimen signatures of G.C.Das, Assistant Personnel Officer and from this it is clear that the signature on the order at Annexure-1(A) is not that of the person in the specimen signature sheet. Similarly, the signature of the Assistant Personnel Officer, D.N.Diggi also is different in the specimen signature sheet (Annexure-A) as also from what is there in Annexure-1(C). Therefore, prima facie it does appear that these two documents at Annexures 1(A) and 1(C) are forged. The sole point for consideration is whether because the applicants had secured employment on the basis of forged documents, they can be dismissed from service without any enquiry. The learned counsel for the petitioners has referred to the Railway Servants (Discipline & Appeal) Rules, 1968 and has pointed out that dismissal from service is a major penalty and major penalty cannot be imposed without initiation of disciplinary proceedings. A similar matter came up before the Hon'ble Supreme Court in the case of Union of India and others, etc. v. M.Bhaskaran, 1996 SCC (L&S) 162. In that case, certain persons secured appointment as casual labourers under the Railways on

the basis of forged and concocted documents. The Hon'ble Supreme Court in paragraph 6 of the judgment have held as follows:

".....If 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 employees, were liable to be recalled and were at least voidable at the option of the employer concerned....."

Their Lordships have also observed that such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders. In the instant case, the respondents have stated and this has not been denied by the applicants by filing any rejoinder that after the fraud came to light, enquiries were made and it was found that the applicants have obtained service by forging documents. Some of them have obtained employment on alleged compassionate ground, but there is no averment in the OA that they had applied for compassionate appointment and were adjudged suitable for getting compassionate appointment.

6. Viewed from another angle, it is not a case where an appointment order though signed by the competent authority is tainted with fraud. In other words, it is not a case where the order of appointment has been signed by the competent authority being unaware of the fraud practised in securing appointment. In such a case appointment order can be recalled by the appointing authority. Here is a case where the respondents in their counter have strongly urged that the appointment orders at Annexures 1(A) and 1(C) purported to have been issued from the office of Senior Divisional Personnel Officer,

Chakradharpur Division, have not been issued from that office and that these appointment orders are concocted and forged documents. No rejoinder has been filed refuting this categorical averments in the counter. Usually, an important order like appointment order, as per normal official procedure, is issued by the competent authority and copies thereof are forwarded to all concerned either by the same authority or by an authority who is subordinate to him. But in this case, the appointment order at Annexure-1(A) has been signed by the Assistant Personnel Officer and the forwarding copies are said to have been signed by Senior Divisional Personnel Officer, Chakradharpur. It is interesting to note that the same person has signed both as Assistant Personnel Officer and as Senior Divisional Personnel Officer. Similar is also the case with the appointment order at Annexure-1(C). This order has been signed by a person different from the one who has signed Annexure-1(A). Here also both the appointment order and the forwarding memo have been signed by the same person. This being the position, there was no necessity to initiate disciplinary proceedings before passing the impugned orders, as contended by the learned counsel for the applicants.

7. In view of all the above, we hold that the applicants are not entitled to the reliefs claimed by them in the Original Application which is accordingly rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN. 20.3.2001

March 22, 2001/AN/PS