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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXX~~
NEW BOMBAY BENCH

O.A. No. 365/87

198

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DATE OF DECISION 2-2-1989

Shri Raghunath Babu Udage Petitioner

Shri S.B.Kasar Advocate for the Petitioner(s)

Versus

General Manager, Central Railway, Respondent
Bombay V.T.

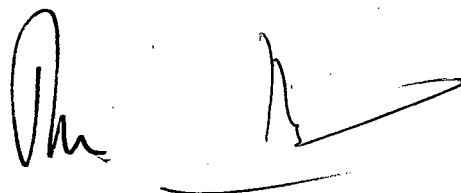
Shri Mohan Sudame (for Shri D.S. Chopra) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)


The Hon'ble Mr. P.S. Chaudhuri

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.365/87.


Shri Raghunath Babu Udage
Opposite Babulal Kirana Shop,
Khandari Zopadpatti,
Bhusawal - 425 201.

.. Applicant

vs.

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

.. Respondents

Coram: Hon'ble Member(J) Shri M.B. Mujumdar
Hon'ble Member(A) Shri P.S. Chaudhuri

Appearances:

1. Shri S.B. Kasar,
Advocate for the
Applicant..
2. Shri Mohan Sudame
(for Shri D.S. Chopra)
Advocate for the
Respondents.

ORAL JUDGMENT:

Date: 2.2.1989

(Per M.B. Mujumdar, Member(J))

Applicant Shri Raghunath Babu Udage has filed this application on 14.5.1987. However, he expired on 23.10.1987 and his widow and three children are brought on record as his legal representatives.

2. By letter dtd. 18.6.1981 the applicant was appointed as Gangman at Bhusawal. In this appointment ^{letter} order it was specifically mentioned that the applicant was appointed purely as a temporary measure. By order dtd. 26.11.1985 his services were terminated. The deceased applicant challenged this order by filing the present application. The prayers made by him in the application are (i) to declare the order dtd. 26.11.1985 as illegal, void, arbitrary, unlawful, etc., (ii) to treat the applicant to be in continuous service from 25.11.1985, (iii) to pay all the arrears

.. 2/-

of pay from 26.11.1985 till his reinstatement. After the death of the applicant his legal representatives have amended the application and prayed that arrears of pay be paid to them.

3. The respondents have resisted the application by filing their written statement. They have produced copies of the relevant documents along with the written statement.

4. We have heard Shri S.B.Kasar, learned advocate for the applicant and Shri Mohan Sudame (for Shri D.S.Chopra) learned advocate for the respondents.

5. The copies of the documents produced along with the application show that the deceased applicant had filled in an attestation form on 12.6.1984. In para 12(c) of that form he had positively stated that he was never arrested, prosecuted, kept under detention, convicted by a Court of law for any offence. Para 1 of the attestation form reads as under:

"Warning-The furnishing of false information or suppression of any factual information in the Attestation form would be a disqualification and is likely to render the candidate unfit for employment under the Government."

Para 3 of the attestation form reads as under:

"If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of person, his/her service would be liable to be terminated."

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It may be noted that the particulars in the form are given both in English and in Hindi. After the appointment of the applicant, the authorities had referred his case to the District Magistrate, Jalgaon for verification of his conduct, character and antecedents. The District Magistrate, Jalgaon by his letter dtd.19.9.1985 informed the Asstt. Engineer (Track), Central Railway, Bhusawal that the Superintendent of Police, Jalgaon had reported that the applicant was sentenced to simple imprisonment for 7 days in Bhusawal City Police Station, Prohibition C.R.No.303/80 U/P 85(1) of Bombay Prohibition Act by the Judicial Magistrate, First Class, Bhusawal. The report of the Superintendent of Police, Jalgaon was also attached by the District Magistrate along with his letter. It was in view of the report of the District Magistrate that the services of the applicant were terminated by the order dtd.26.11.1985.


6. The deceased applicant had submitted a representation dtd.16.2.1986 against the impugned order. In that representation he admitted that he was involved in a small offence due to domestic quarrel and he was fined Rs.10/- by Judicial Magistrate, First Class, Bhusawal. He further stated that he had realised his mistake and would improve his behaviour and conduct in future. May it be noted that this conviction is different from the one referred to by the District Magistrate. Shri Kasar fairly showed us a copy of the judgment in Criminal Case No.1221/80 decided by the Judicial Magistrate, First Class, Bhusawal. The copy shows that the deceased applicant was convicted under Sections 110 and 112 of the Bombay Police Act and sentenced to pay a fine of Rs.10/- or in default to suffer simple imprisonment for 5 days. The copy shows that he was convicted on 13.6.1980 as he pleaded guilty. This is the offence which is referred


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to by the applicant in his representation dtd.16.2.1986 and is different from the one referred to by the District Magistrate, Jalgaon in his letter. In view of these undisputed facts we are of the view that the respondents were justified in terminating the services of the applicant because he had suppressed material facts while filling up the answers in the attestation form.

7. Shri Kasar submitted that the respondents could not have terminated the services of the applicant without following the procedure laid down in Railway Service (Discipline and Appeal) Rules, 1968. However, as the applicant was appointed purely as a temporary measure and subject to the report about his character and antecedents we do not think that the respondents ^{were} ~~are~~ required to have followed the procedure laid down in the Discipline & Appeal Rules in this case. It is pertinent to note that the conviction of the deceased applicant in two cases has not been disputed before us. In Union of India vs. Balvinder Singh, 1986 (3) SLR 461, decided by the Chandigarh Bench of the Tribunal the employee at the time of entering in service had concealed the fact that he was convicted and released on Probation under the provisions of the Probation of Offenders Act. In the attestation form which was submitted by the employee he had concealed the fact of his conviction. There was a warning in the attestation form, as in this case. After receiving a report about the conviction, the authorities terminated his services. The Chandigarh Bench held that the order of the termination was proper and Article 311 was not attracted. We are in respectful agreement with that view.

8. In result we find no merit in this application and hence dismiss the same with no order as to costs.


(P. S. CHAUDHURI)
Member (A)


(M. B. MUJUMDAR)
Member (J)