(15)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. Nos. 797/87, 209/88, 245/88,
T.A. No. 308/88, 310/88, 384/88, 1988
385/88, 455/88, 502/88,
816/88, 817/88, 868/88,
915/88, 916/88, 918/88 &
942/88.

DATE OF DECISION 22-3-1991.

Shri S.B.Patil & Ors. Petitioner

S/Shri N.Chaudhari, G.S.Walia, L.M.Nerlekar, D.V.Gangal & Palrecha. Advocate for the Petitioner (s)

Versus

Central Railway, Bombay V.T. Respondent

S/Shri J.G.Sawant, P.R.Pai & R.K.Shetty Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. T.C.Reddy, Member (J)

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

(M.Y.Priolkar)
Member (A)

(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
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1. Original Application No.797/87

Shri S.B.Patil

2. Original Application No.209/88

Shri N.P.Chandpure

3. Original Application No.245/88

Shri R.Aswappa & Another

4. Original Application No.308/88

Shri D.K.Alkunde

5. Original Application No.310/88

Shri S.R.Waikar

6. Original Application No.384/88

Shri C.M.More

7. Original Application No.385/88

Shri V.G.More

8. Original Application No.455/88

Shri B.T.Thenge

9. Original Application No.502/88

Shri K.Fakira

10. Original Application No.816/88

Shri N.G.Dayane

11. Original Application No.817/88

Shri R.S.Sonawane

12. Original Application No.868/88

Shri S.B.Vishwakarma

13. Original Application No.915/88

Shri H.S.Gaikwad

14. Original Application No.916/88

Shri S.M.Giranje

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15. Original Application No.918/88

Shri B.M.Pillai

16. Original Application No.942/88

Shri G.L.Jadhav ... Applicants

V/s

Central Railway, Bombay V.T.

CORAM : Hon'ble Member (A), Shri M.Y.Priolkar
Hon'ble Member (J), Shri T.C.Reddy

Appearances:

Applicants by:

1. Mr.N.Chaudhari, Advocate, in OA 209/88 & 502/88,
2. Mr.G.S.Walia, Advocate in OA 245/88,
3. Mr.L.M.Nerlekar, Advocate, in OA 308/88, 310/88, 384/88, 385/88, 816/88, 817/88, 868/88 and 942/88,
4. Mr. D.V.Gangal, Advocate, in OA 455/88, and
5. Mr. Palrecha, Advocate, in OA 915/88, 916/88 and 918/88.

Respondents by:

1. Mr.J.G.Sawant, Advocate, in OA 797/87, 384/88, 385/88, 455/88, 502/88, 816/88, 817/88, 916/88 & 942/88,
2. Mr. P.R.Pai, Advocate, in OA 209/88, 868/88, 915/88 & 918/88, and
3. Mr.R.K.Shetty, Advocate, in O.A. 245/88, 308/88 & 310/88.

JUDGEMENT: Dated : 22-3-1991

(Per. M.Y.Priolkar, Member (A))

All these 16 original applications (Nos.797/87, 209/88, 245/88, 308/88, 310/88, 384/88, 385/88, 455/88,

.... 3/-

502/88, 816/88, 817/88, 868/88, 915/88, 916/88, 918/88 & 942/88) have been filed under Section 19 of the Administrative Tribunals Act, 1985, by the respective applicants, against termination of their services without holding enquiry. As the issues involved and the reliefs prayed for are the same in all these applications, they were heard together and are being disposed of by this common order.

2. The applicants had entered service under the Central Railway as casual employees and, admittedly, all of them had attained temporary status and were, therefore, covered by the provisions of Railway Servants Discipline and Appeal Rules, 1968. Show Cause notices were issued to the applicants on various dates directing them to explain as to why their services should not be terminated as they had secured employment on producing service cards bearing some forged and false entries. All the Counsel appearing for the respondent Railway also admitted that, thereafter, the applicants' services were terminated without holding the enquiry prescribed under the Discipline and Appeal Rules since the applicants failed to explain the allegation regarding the forged documents.

3. The only question that arises for our determination in this case is whether the termination of service without holding enquiry is illegal and the applicants are entitled to reinstatement with full back wages and continuity of service. It was argued on behalf of the applicants that this point was

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decided in favour of the employees in a judgement passed by this Bench of the Tribunal in Original Application No.426/87 in the case of Ganga Prashad and others v. Union of India and others and a Special Leave Petition filed by the Union of India and others has been dismissed by the Supreme Court on 8.5.1989 on merits and, therefore, this Tribunal cannot now take a different view. This issue regarding the binding nature of our above judgement in O.A.No.426/87 was, however, considered recently by another Bench of this Tribunal of which one of us (M.Y.Priolkar) was a member, while deciding another group of 21 applications on this subject, and in its judgement dated 20.7.1990 it has been held that the earlier judgement would not have any binding effect on us. We reproduce below the relevant extracts from the judgement dated 20.7.1990, with which we are in complete agreement:-

> ". . . . It is true that in the case of Ganga Prashad and Ors. V/s Union of India & Ors. the termination of services of the applicants were quashed and the respondents were directed to reinstate all of them in service with full back wages and that the SLP filed by the Union of India against that Judgement had been dismissed by the Supreme Court on merits without, however, recording any reasons, we do not feel inclined to accept argument so advanced by the side of the applicants. It has been held by the Supreme Court in the cases of Workmen of Cochin Port Trust V/s Board of Trustees of the Cochin Port Trust and Another and Indian Oil Corporation Ltd. V/s. The State of Bihar & Ors. reported in (1978) 3 S.C.C.119 and 1987(1) SLJ page 94 that the effect of a non-speaking order of dismissal of a SLP without anything more indicating the grounds or reasons of its dismissal must, by necessary

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implications be taken to be that the Supreme Court had decided only that it was not a fit case where an SLP should be granted. In addition, if we are to refer any decision of the Central Administrative Tribunal we would at once refer to the full Bench decision passed by the Bangalore Bench in the case of K.Ranganathan & Ors. V/s Accountant General, Bangalore & Ors. reported in (1989) 9 Administrative Tribunal Cases 864. In that case it has been held that if a Writ Petition under Article 32 of the Constitution is dismissed by the Supreme Court in limine without giving reasons that would not operate as a binding precedent. In our opinion, when the judgement passed by this Tribunal in Ganga Prashad & Ors. was not upheld by the Supreme Court in so many words recording reasons, we do not find that the same would have any binding effect on us. All what we find that in disposing the SLP filed by Union of India and others the Supreme Court was simply of the view that it was not a fit case where an SLP should be admitted in favour of the Union of India & Ors."

4. This judgement dated 20.7.1990 further holds that unless and until it is established after giving an opportunity to the respective applicants that in the matter of securing employment they had really used some bogus cards and taken recourse to forgery, the respondents cannot treat the appointments as void ab-initio and terminate the services without holding enquiry. The respondents should have held enquiries against the applicants and since they have not given the applicants an opportunity to defend their cases in such enquiries, the respondents cannot absolve themselves from the liability of re-instatement of the applicants.

5. We are in agreement with the reasons given and conclusions reached in the above judgement dated 20.7.1990 of this Tribunal and are inclined to pass an

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order on the same lines in these cases also. The respondents are accordingly directed to reinstate all the applicants within three months from the date of receipt of a copy of this order, and on such re-instatement the applicants should have continuity of their service. The respondents are directed to hold enquiries against the applicants, on the allegations for which they were directed to show-cause earlier, in accordance with the rules. The applicants having acquired temporary status as casual labourers would be entitled to prefer appeals if the orders passed in the enquiries go against them. There will be no direction at present, however, to pay to these casual workers any wages for the period they have not actually worked. If, ultimately, the applicants are exonerated of the charges, they would be entitled to get their back wages for the intervening period. There is no order as to costs.

(T.C.Reddy)
Member(J)

(M.Y.Priolkar)
Member (A)

22-3-91