

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No. 60/87

Amarnath Sundarlal Sharma,  
46, Yashodhan Niwas,  
Central Railway Cooperative Hsg. Society Ltd.,  
Kalyan Road, Tilak Nagar,  
Dombivli (East),  
PIN CODE: 421 201.  
Dist. Thane.

.. Applicant.

vs.

The Divisional Railway Manager,  
Central Railway,  
Bombay V.T.  
BOMBAY.

.. Respondent.

Coram : Hon'ble Member(A) Shri P. Srinivasan.

Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

1. Shri G.D. Samant,  
Advocate for the  
Applicant.
2. Shri R.K. Shetty,  
Advocate for the  
Respondents.

ORAL JUDGMENT

Date : 16-6-1988

¶ PER : P. SRINIVASAN, MEMBER (A) ¶

The applicant who was working as a Casual Labourer on daily wage in the Office of the Divisional Electrical Engineer, Traction Distribution Department - DEE(TD) for short of the Central Railway at Kurla from 11.4.1984, tendered his resignation from the post by letter dtd. 31-3-1986. However, by subsequent letter dtd. 5-5-1986 he sought to withdraw his earlier letter of resignation. The respondents refused to allow him to withdraw his letter of resignation and this refusal was communicated in a letter dtd. 9-7-1986 addressed to the applicant by <sup>¶ the</sup> Senior Divisional Electrical Engineer (Traction Distribution) Bombay. (Page 37 of the application) Aggrieved with this letter he has prayed that directions be issued to the respondent to take him back to the service ignoring the letter of resignation given by him on 31-3-1986.

*P. Srinivasan*

2. Shri G.D. Samant, learned advocate for the applicant submitted that the applicant gave his letter of resignation on 31-3-1986 under compelling circumstances. He was being harassed by the railway administration because he had claimed temporary status on the ground that he had put in 120 working days. He was not allowed to come on duty between 27-3-1986 to 31-3-1986. Therefore, out of distress and frustration he gave the letter of resignation on 31-3-1986. This letter of resignation was not accepted by the respondent till he submitted his letter dtd. 5-5-1986 for withdrawing the same. The Divisional Electrical Engineer (Traction Department) Kurla, wrote a letter to the applicant on 17-6-1986 rejecting his contention that he had submitted resignation on 31-3-1986 under force or pressure. The letter went on to say that the applicant, if he wished to be reappointed, could request the DRM Bombay for such appointment on compassionate grounds. Actually even before this, on 19-5-1986 the DEE(TD) Kurla wrote to the applicant that if he wanted to withdraw his resignation he could do so within a week's time after receipt of the said letter. According to Shri Samant the applicant went to report for duty on 22-5-1986 with the aforesaid letter. The office of the DEE took that letter from him and later returned it to him with an addition in ink which read "you must bring the card No.297861 which was handed over to you while resigning". Shri Samant submitted that no such card had been furnished by the applicant to the respondents in the first instance and so there was no question of such a card being handed over to him on his resignation. Thereafter the applicant was not allowed to rejoin. Shri Samant submits that this refusal was based on the allegation of the respondents that the applicant had earlier submitted a fictitious Card (No.297861). For this reason they had refused to accept the applicant's letter withdrawing his resignation. If the respondents had the alleged fictitious card with them they could have proceeded against the applicant in a disciplinary action, but they could not for this reason refuse to allow him to withdraw his resignation.

3. Shri R.K. Shetty, learned counsel for the respondents strongly refuted the contentions of Shri Samant. The applicant on his own volition submitted his resignation on 31-3-1986 and it was accepted on that date.

P.K. Shetty

While accepting the resignation, the Card No. 297861 was handed over to him. This card purported to contain a certificate that the applicant was employed with the Chief Inspector of Works (M) Kalyan during the period from 20-2-1981 to 18-6-1981 (Ex. 'A' to the reply of the respondents). On verification the respondents had found that the applicant had not worked in that office during the said period. The applicant was however earlier given employment on the basis of this Card, in the Office of the DEE on 11-4-1984. According to the prevailing instructions, a casual labourer could be employed only if he had worked as a daily wager in any of the railway departments before 1-3-1981. Since the card testifying to the applicant's employment prior to 1-3-1981 was found to be fictitious, the applicant's appointment itself was not correct. The applicant subsequently produced another Card No. 331791 according to which, he had worked in the Diva-Bhasin Project of the railways during the period 16-4-1982 to 5-4-1983. Since this period fell after 1-3-1981 the applicant was not entitled to employment on the basis of this card either. Therefore the action of the respondent in accepting the resignation of the applicant with effect from 31-3-1986, thereby sparing him the ordeal of a departmental enquiry against him and all consequences thereof was actually a favour shown to the applicant. Shri Shetty therefore submitted that this application should be dismissed.

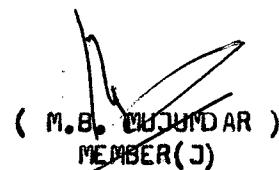
4. We have considered the rival contentions carefully. The respondents have stated that the applicant was first appointed as a casual labourer in the office of the DEE(TD) Kurla on 11-4-1984 on the strength of a service card produced by him evidencing his service with the Inspector of Works, Kalyan prior to 1-3-1981. But for this certificate, he would not have been given appointment at all, because under the existing policy no casual labourer who had not worked prior to 1-3-1981 could be employed with the railways. In view of this policy and the facts which have now emerged before us it appears that the appointment given to the applicant on 11-4-1984 was based on incorrect information and was therefore a mistake. As already explained above, service card No. 331791 which the applicant has produced before us now testifies to his service only from 16-4-1982. Therefore on the basis of this service card also, his employment from 11-4-1984 was a clear mistake. We do agree with Shri Shetty

P. S. Iyer

that the respondents have been considerate to the applicant in not initiating disciplinary proceedings against him for alleged production of fictitious card. He informs us that the respondents do not propose to take any such action in future either. Therefore we are of the view that in the circumstances the best thing that could have happened to the applicant was that his resignation letter of 31-3-1986 was accepted by the respondents. We do not think that we should reverse this decision now. However, we must here notice that the DEE(TD) Kuria himself suggested to the applicant in his letter dtd. 17-6-1986 (Page 27 of the application) that he could make a request for fresh appointment on compassionate grounds as his father was working in the railways. The applicant should have grabbed this opportunity and made such an application. But we understand that he did not do so. He can now make an application to the respondents for such compassionate appointment. Shri Shetty informs us that for such compassionate appointment the rules provide for relaxation of the upper age limit also. When the applicant makes such an application we direct to the respondents to consider the said application without reference to earlier events and to accommodate him if they find him suitable in all respects. We hope that they will take a decision very early considering the fact that the applicant has been out of employment for quite sometime now. This is all that we can do.

5. The application is disposed of on the above terms. Parties to bear their own costs.

  
( P. SRINIVASAN )  
MEMBER(A)

  
( M.B. CHUNDAR )  
MEMBER(J)