

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 56 of 1988
~~XXXXXX~~

DATE OF DECISION 14.8.1989

Shri Dhyanran Jaiswal Petitioner

Shri D.V.Gangal Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri P.R.Pai Advocate for the Respondent(s)

CORAM :

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

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

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, NEW BOMBAY

(7)

ORIGINAL APPLICATION No.56 OF 1988.

Shri Dhyanram Jaiswal,
Golibar Ganesh Maidan,
Pavwale Ka Chawl,
Room No.11, Ghatkopar,
Bombay - 400 086.

... Applicant

V/s.

- 1) Union of India, through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
- 2) The Divisional Railway Manager,
Central Railway,
Bombay V.T.

... Respondents

Coram: Hon'ble Member(J), Shri M.B. Mujumdar
Hon'ble Member(A), Shri M.Y. Priolkar

Appearance:

- 1) Mr.D.V.Gangal,
Advocate for the
Applicant.
- 2) Mr.F.R.Pai,
Advocate for the
Respondents.

ORAL JUDGMENT:

Date: 14.8.1989.

[Per: Shri M.B.Mujumdar, Member(J)]

According to the applicant he worked as a Casual Labourer under Inspector of Works, Bandra from 1.2.1981 to 18.3.1981. From 25.3.1983 to 5.4.1984 he worked as Pointsman under the Station Master, Byculla. Again from 3.6.1986 to 7.12.1987 he worked as Peon under Divisional Manager's Officer at Bombay V.T. It is his case that ^{he} was illegally and orally asked by the officer concerned [^] not to come on duty from 8.12.1987. Hence he has filed this application on 13.1.1988 for directing the respondents to re-instate him with full back wages and

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continuity of service.

2. The respondents have filed their written statement. According to them the applicant, who was a Bunglow Peon of Senior Divisional Operating Superintendent(M) Central Railway, Bombay V.T. was screened while working as Substitute Assistant Pointsman under Station Superintendent Byculla and empanelled at Serial No.234 for regular absorption as Assistant Pointsman in Operating Department. However, his absorption against regular post was subject to verification of previous service, educational qualifications, date of birth, etc. The applicant was called for regular absorption as Pointsman. However, on going through the Casual Labour Service Card No.238153 propoing to have been issued by the Inspector of Works, Bandra, it was suspected to be not genuine. The clerk was deputed to obtain the report from Inspector of Works, Bandra. On his visit the clerk was told that there was no post of Inspector of Works, at Bandra. From this and other circumstances, according to the respondents, the Casual Labour Card was bogus. The applicant orally confessed this fact and in order to avoid the consequences of enquiry and other punitive action he absconded from duty after 8.12.1987.

3. But it is undisputed that no enquiry as such was conducted against the applicant. Neither any show cause notice was given nor any charge was framed. According to the applicant he was orally asked not to come on duty from 8.12.1987, while according to the respondents, the applicant himself absconded from 8.12.1987 as he was afraid of consequences of the enquiry and other punitive action. In our view it is immaterial whether the applicant was orally asked not to come on duty from 8.12.1987 as alleged by the

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applicant or he himself remained absent from 8.12.1987 due to the fear of action. The applicant has filed this application on 13.1.1988 i.e. within one month and six days from that date. If it was the case of the respondents that the applicant himself absconded from duty they should have immediately filed the reply saying that they are prepared to take him on duty immediately. This they have not done.

4. Hence the only point that shall have to be decided in this case is whether the respondents were justified in terminating the services of the applicant without holding any departmental enquiry, when according to them he had obtained employment by producing a bogus Casual Labour Card.

5. The point is concluded by the judgment dated 14.8.1987 in Kismatram Kedaram Vs. Divisional Railway Manager, Central Railway, Bombay V.T. (O.A.No.219/86) and the Judgment dated 17.8.1988 in Jaitu T. Tiwari Vs. Divisional Electrical Engineer, Central Railway, Kalyan (O.A.No.247/87). Both the judgments are of this Bench. The former is a common judgment in 13 similar original applications and the later is a common judgment in 34 original applications.

6. Against the judgment in Kismatram Kedaram's case review petition No.34/87 was filed by the Railway Administration. But it was dismissed on 17.11.1987. The Railway Administration had preferred a Special Leave Petition in the Supreme Court against the dismissal of the review petition but it was dismissed on 1.2.1988. The railway administration had also filed Special Leave Petition against the judgment in Jaitu Tiwari's case but it was also dismissed by the Supreme Court on 8.5.1989. In all these it was the case of the Railway Administration that the applicants had obtained employment by producing bogus casual labour cards and hence their services were could be terminated without holding regular departmental enquiry.

This Bench has held in all these cases that the Railway Administration was not justified in terminating the services without following the procedure, namely, holding a regular departmental inquiry. So far as legal position is concerned it is immaterial whether the services were terminated orally or in writing. Hence relying on both the judgments we are inclined to allow this application and pass similar orders.

7. Mr.P.R.Pai, learned advocate for the respondents relied on two judgments, namely, (i) S.K.Agarwal and others Vs. Union of India, 1989(2) A.I.S.L.G., 353, and (ii) Ishwar Dayal Sah Vs. State of Bihar and Others, 1987, Labour and Industrial Cases 390. But Ishwar Dayal Sah's case length ^{is discussed at} in para 6 of the Judgment in Kismatram Kedaram's case while S.K.Agarwal's case is referred in para 7 of the Judgment in Jaitu T. Tiwari's case. Of course the name of the parties are not given in that paragraph. But it is a judgment of the Principal Bench and from the citation, we find that it is the same judgment. In fact Mr.P.R.Pai appeared for the respondents in Jaitu T. Tiwari's case.


8. We, therefore, hold that the application shall have to be allowed and pass the following order:

O R D E R

- 1) The respondents are directed to take back the applicant in service with effect from 8.12.1987 in the same post in which he was working on the previous days with all full back wages from 8.12.1987 till re-instatement and continuity in service.

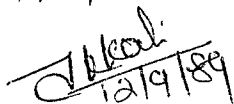
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- (ii) These directions should be complied with within two months from the date of receipt of a copy of this order.
- (iii) Respondents are, however, at liberty to hold a departmental inquiry against the applicant on the charge of producing bogus casual labour card and pass appropriate orders according to rules.
- (iv) Parties to bear their own costs.

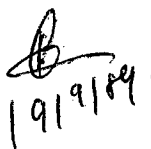

(M.Y. Priolkar)
Member (A)


(M.B. Mujumdar)
Member (J)

Judgment dt. 14/8/89
Send to parties on
12/9/89.


12/9/89

Judgment dt. 14/8/89
served on Applicant
on 15/9/89.


19/9/89.