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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXX~~
NEW BOMBAY BENCH

O.A. No. 586 of 1988
~~XXXXXXXXXX~~

DATE OF DECISION 31.8.1989

Shri Rakesh Amrutlal Vig Petitioner

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

Versus

General Manager, Central Rly. & 2 Respondent
Others.

Shri J.G.Sawant Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. P.S.Chaudhuri, 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? Yes
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



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.586/88

Shri Rakesh Amrutlal Vig,
R/o Pole Building,
New Area Ward,
Bhusawal,
Dist: Jalgaon.

.. Applicant

V/s.

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Personnel Branch,
Central Railway,
Bhusawal,
Dist: Jalgaon.
3. The Assistant Personnel Officer,
of the Divisional Railway Manager,
Personnel Branch,
Central Railway,
Bhusawal,
Dist: Jalgaon.

.. Respondents.

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

Appearance:

1. Shri D.V.Gangal,
Advocate
for the applicant.
2. Shri J.G.Sawant,
Advocate
for the respondents.

ORAL JUDGMENT:-

Dated: 31.8.1989

{PER: Shri M.B.Mujumdar, Member(J)}

The applicant is holding a Post Graduate Degree in Commerce from Poona University. In 1985 he was working as Manager of the Rajkamal Theatres at Jalgaon. Earlier in pursuance ^{of} ~~to~~ an advertisement, he had applied to the Railway Service Commission for a non-technical category post. He appeared for the examination and was selected

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for the post of Ticket Collector. Appointment order dated 12.5.1987 was issued to him stating that he will be considered for appointment to the post of Ticket Collector in the grade of Rs. 950-1500 in Bhusawal Division of the Central Railway on the terms and conditions mentioned in the order. The applicant passed the prescribed medical examination and he also successfully underwent the theoretical training course at the Zonal Training School at Bhusawal from 15.6.1987 to 25.7.1987. Thereafter he was sent for practical training at Akola. The practical training was to be of 30 days at gate and 30 days on line. However, before he could complete the practical training an order dated 1.9.1987 was passed putting him off duty with immediate effect due to adverse police report. Thereafter a letter dated 28.9.87/9.10.87 was sent to him. That letter reads as follows:-

"...A reference is invited to this office letter No.BSL.P.574.C-I dated 12.5.1987, wherein you were informed about your being selected by the Railway Recruitment Board, for appointment as a Ticket Collector, and you were instructed to attend this office for being directed to the Medical Superintendent Bhusawal for Medical Examination. You were also informed under the same letter that your appointment was subject to all rules and regulations issued by the Government of India and the Central Railway Administration from time to time, which included that your appointment was subject to the verification of your character and antecedents by Police Authorities and in case of receipt of any adverse report against you, your services would be terminated forthwith without any notice.

2. The action to stop you from work as per XR wire issued on 1.9.87 was in consequence thereof. Your service thus stand terminated.

Please note.."

2. On 2.3.1988 the applicant filed the present

application praying for quashing and setting the impugned order dated 1.9.1987 by which he was put off duty. It appears that the applicant had subsequently filed another exhaustive application in this Tribunal but as he had filed this application earlier that application was disposed of as not maintainable by order dated 27.7.1988.

3. The respondents have resisted the application by filing their written statement. We have heard Mr.D.V.Gangal, learned advocate for the applicant and Mr.J.G.Sawant, learned advocate for the respondents. We have also gone through the relevant record.

4. It is the case of the respondents that the applicant was put off duty because of the adverse police report against him and because he had suppressed a material fact regarding his arrest by the police on 26.4.1986. It is true that the copy of the appointment order dated 12.5.1987 at Exhibit-2 to the written reply of the respondents stipulated that the applicant's appointment was subject to verification of his character and antecedents. But this condition is not there in the appointment order which was sent to the applicant and which he has produced at Exhibit-A to the application. After considering the carbon copy of the order, we find that this condition must have been inserted some time after the appointment order was sent to the applicant though before the order dated 28.9.1987/9.10.1987 was passed. It is ~~necessary to point out at this stage~~ ~~that it is~~ indeed surprising that such a thing should happen. We hope that the respondents will have the

matter investigated thoroughly and take appropriate remedial measures. The contents of this insertion are, in our opinion, not very material to this case but it is clear that in the order of appointment sent to the applicant that condition was not there. Hence in our opinion the respondents were not justified in putting the applicant off duty because of the so called adverse remarks from the police. However, even assuming that the condition was there we do not think that the respondents were justified in putting the applicant off duty in view of the report of the District Magistrate, Jalgaon dated 21.8.1987. The report is not produced on record but it was shown to us by Mr. Sawant, learned advocate for the respondents. The report is in Marathi and on translation it reads as follows:-

"Enquiry was made through the Police Superintendent, Jalgaon about the Character and antecedents of Shri Amritlal Rakesh Vig of Bhusawal. It is found therefrom that he was arrested on 26.4.86 in C.R.No.90/86 of Bhusawal Bazar Peth Police Station under Sections 498(A), 380, 406, 323, 506 read with 34 of the Indian Penal Code and was taken in Magistarial Custody from 26.4.86 to 27.6.86. On 30. 6.86 a charge-sheet was submitted against him in the Court of the Judicial Magistrate First Class, Bhusawal. The case is going on in the court. Attached herewith the documents regarding the character and antecedents.."

5. We may point out that the applicant's father is serving as a Conductor in the Central Railway at Bhusawal and the applicant is married to one Bharati on 19.5.1985. Her father is working as Assistant Loco Foreman in the same Railway at Bhusawal. But in a short time after the marriage disputes started between the applicant and

his wife. As a result thereof she filed a complaint in a police station at Bhusawal making allegations against him, his mother and three married and two unmarried sisters. On the basis of the complaint the applicant was arrested on 26.4.1986 and after investigation police have submitted a charge-sheet against all of them under the sections mentioned in the District Magistrate's report. The case is still pending in the Court of the Judicial Magistrate First Class at Bhusawal.

6. In the report of the District Magistrate, what is mentioned is about the arrest of the applicant on 26.4.1986 and about his magisterial custody for about two months thereafter. There is also a reference to the complaint filed against the applicant and the charge-sheet submitted against him in the court. Though the applicant was remanded to magisterial custody for two months by the Judicial Magistrate First Class, it appears that the applicant was released on bail of payment of cash security on 28.4.1986. We were told about this by Mr. Gangal, learned advocate for the applicant and we find this to be correct from the application from the wife of the applicant which is on record in this case.

7. One of the basic principles of our criminal jurisprudence is that a person is presumed to be innocent till he is held guilty by a court of law. The case against the applicant is still pending. Hence it cannot be said that he is guilty of the offences alleged against him. In view of this undisputed position we are unable to find that the report received from the

District Magistrate, Jalgaon is in any way adverse.

8. It is of course true that in the attestation form filled up by the applicant on 22.5.1987 he had not stated that he was arrested by the police on 26.4.1986. But at the same time it is material to point out that he had mentioned in the form at three places that ~~the~~ cases were pending against him in the courts at Bhusawal and Jalgaon regarding some matrimonial matters. Obviously this reference must be to the criminal case pending against him in the court of the Judicial Magistrate First Class which was filed by the police on the complaint of his wife. It appears that the applicant's wife has filed a divorce proceeding against him in the District Court at Jalgaon and it is also still pending. To that also he has made a reference in the attestation form. In view of this position we are unable to hold that the respondents were justified in putting the applicant off duty because of the police report as made out by them in the orders dated 1.9.1987 and 28.9.1987/9.10.1987. Be it noted that in these orders the only ground given for putting the applicant off duty was the adverse police report. As already pointed out the report is not adverse at all.

9. It was, however, submitted by Mr. J. G. Sawant, learned advocate for the respondents that the applicant had suppressed the fact of his arrest by the police on 26.4.1986 and even on this ground they were entitled to put him off duty. In the first place this ground is not given in the orders mentioned above. Moreover, when the complaint was lodged by his wife, the police were required to arrest the applicant. But in our



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opinion this will not be a ground for putting the applicant off duty. It may be that the applicant considered that the information given by him in the attestation form was adequate and there was need to make a specific mention about his arrest more than a year back. If the respondents would have given a show cause notice to the applicant before terminating his service he would have clarified the position.

10. We, therefore, hold that the impugned orders dated 1.9.1987 and 28.9.1987/9.10.1987 are bad in law. This of course does not mean that the respondents will not be entitled to take appropriate action in case any penalty is imposed on the applicant on the ground of conduct which led to his ^{conviction} by the learned Judicial Magistrate First Class for the offences alleged against him.

11. In this respect Mr. J. G. Sawant, learned advocate for the respondents relied on two cases. The first is Monaranjan Biswas v. Sub-Divisional Inspector and Others, 1989(10) ATC 427. This is a judgment of the Calcutta Bench of this Tribunal. In that case the services of the applicant were terminated as he had suppressed the fact regarding his involvement in a criminal case in the attestation form filled up by him for verification of his character and antecedents. He had also failed to mention about his arrest. His termination was held valid by the Tribunal. But the facts of that case are distinguishable from the facts of this case. In the case before us the applicant had mentioned in the

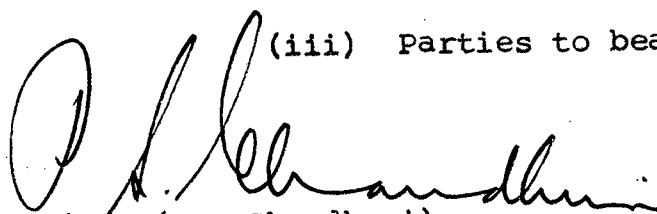
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attestation form about the prosecution at three places. Hence in our opinion the case cited does not help the respondents. The second case relied upon is Bikash R. Bose v. Union of India and Others, 1989(9) ATC 626. It is a judgment of the Calcutta Bench of this Tribunal. In that case the applicant was appointed for a fixed term of 120 day as Extra Departmental Sub-Post Master subject to verification of character and antecedents. His services were terminated before expiry of the term for a reason other than the verification. This was held to be not sustainable. We are unable to find anything in this judgment which would heap the respondents before us.

12. In result, we hold that the application is entitled to succeed and hence pass the following order:-

O R D E R

- (i) The impugned orders dated 1.9.1987 (Exhibit-3 to the reply of the respondents) and the order dated 28.9.87/9.10.87 (Exhibit-4 to the reply of respondents) are hereby quashed and set aside.
- (ii) Respondents are hereby directed to re-instate the applicant within two months from the date of receipt of a copy of this order, as Trainee Ticket Collector with effect from 1.9.1987 with all the monetary and other benefits to which he is entitled according to rules. Respondents are at liberty to send the applicant for such training as they may deem proper.
- (iii) Parties to bear their own costs.


(P. S. Chaudhuri)
Member(A)


(M. B. Mujumdar)
Member(J)