

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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New Bombay Bench

O.A. No. 47/88
T.A. No.

198

DATE OF DECISION 8-3-1990

Madhukar Rama

Petitioner

Smt. Radha D'Souza

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mr. PR Pai

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. S. Chaudhuri, Administrative Member

&

The Hon'ble Mr. A. V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

(8)

Before the Central Administrative Tribunal
New Bombay Bench, New Bombay-400 614

Date: 8.3.1990

Present

Hon'ble Shri P.S.Chaudhuri, Administrative Member
&
Hon'ble Shri A.V.Haridasan, Judicial Member

Original Application No.47/88

Shri Madhukar Rama
Indian inhabitant residing at
Ramabai Nagar Near Panchshil
Kiran Stores, Manmad,
Taluka Nadgaon,
District Nasik.

Applicant

v.

1. Union of India through the
Ministry of Railways.
2. The Divisional Manager,
Central Railway, Bhusawal. - Respondents

Smt.Radha D'Souza - Counsel for the
applicant

Mr P.R.Pai - Counsel for the
respondent

JUDGEMENT

(Shri A.V.Haridasan, Judicial Member)

The relief claimed in this application under
Section 19 of the Administrative Tribunals Act is a
declaration that the termination of the services of the
applicant by the respondents on 27.1.1987 is illegal,
arbitrary and contrary to the Discipline and Appeal Rules,
read with Clause 2511 of the Railway Establishment Manual,
and a direction to the respondents to reinstate the
applicant with full back wages, continuity of service and
all other attendant benefits. The short facts of the case
as stated in the application are as follows.

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2. The applicant was first engaged as casual labourer in the Central Railways in the year 1972. Having worked for sufficient length of time, he has attained temporary status as provided for under para 2511 of the Indian Railway Establishment Manual, he had been sent for medical examination and his name was placed in the confirmation list at Sl.No.62. The name of the applicant was wrongly entered in the School Certificate as Madhukar Ramdas instead of Madhukar Rama. The respondents at the request of the applicant changed the entry in the service records correcting the name as Madhukar Rama from Madhukar Ramdas to suit the name as written in the School Certificate. But the inspecting staff of the I.O.W., K.N.W. without assigning any reason stopped the applicant from employment from 27.1.1987. When he made enquiries he came to know that the entry in the service sheet relating to the casual labourer card issued to the applicant was in the name of one Ragho Parbat and that therefore the applicant could not be further engaged. The applicant submits that the casual labourer card bearing No.33912 was issued to him, that he has served from 1972 onwards and that is non-employment without assigning any reason amounts to illegal termination of his services.

3. In the reply statement filed on behalf of the respondents, it has been contended that the casual labourer card No.33912 was issued to one Ragho Parbat, that the

under
applicant has secured employment / the Railways by
producing the bogus card, has no right to continue in service
and that therefore he is not entitled to any reliefs. It has
also been contended that the Discipline and Appeal Rules are
not applicable to him and that the application is barred by
limitation.

4. We have heard the arguments of the learned counsel
~~for the Respondent~~ ^{Adv.}
~~on either side~~ and have also perused the documents produced.

Regarding the plea of limitation, the applicant was denied
employment from 27.1.1987 onwards. He has made a represen-
tation on 4.2.1987 to the Divisional Railway Manager,
Bhusawal and another representation through Advocate on
11.9.1987. This application has been filed on 7.1.1988.
Therefore we find that there is no limitation. Now that
the applicant has been working as a casual labourer for a
sufficiently long time is admitted in the reply statement
filed on behalf of the respondents. The case of the applicant
that he was denied employment from 27.1.1987 onwards is also
not in dispute. The denial of employment is justified on
the ground that the applicant is a person who secured the
employment by producing a bogus card and that therefore, he
is not entitled to / in employment. But whether the service
card produced by the applicant when he joined the services
^{is bogus}
of the respondents / or not is a matter which is yet to be
established. Subjective satisfaction of the respondents or
a unilateral decision by them that the service card is a

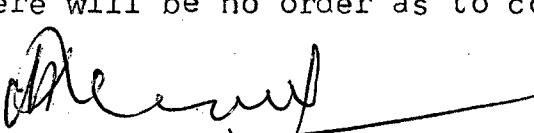
forged one will not clothe the respondents with the authority to terminate the services of the applicant without giving him an opportunity to show cause that the service card produced by him was genuine one and that there was no forgery as alleged. So without giving a show cause notice to the applicant and without hearing him, the respondents could not have legitimately come to a conclusion that the service card produced by the applicant was forged and therefore the respondents could not legally denied employment to the applicant. The learned counsel for the respondents referred us to the decision of the Principal Bench of the Central Administrative Tribunal in Sanjiv Kumar Aggarwal and others Versus Union of India, reported in (1987) 3 ATC, 990 wherein it was held that where termination is ordered due to the reason that employment was secured by dishonest means or appointment was done by mistake and public servant was not qualified for appointment, plain order of termination without detailed enquiry by invoking statutory provisions or in accordance with terms of appointment order is valid and that it was not necessary to held a departmental enquiry. The learned counsel submitted that in this case also as in the Sanjiv Kumar's case has produced a false service card and has obtained appointment as casual labourer and that therefore to remove him from service it was not necessary to conduct any regular disciplinary enquiry. The facts of this case are entirely different from the facts of the case cited. In that case

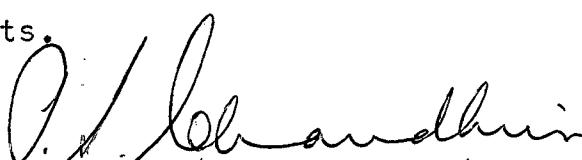
the services of a probationer were terminated after giving him a show cause notice and considering his representation. The employee concerned did not ask for examination of any witnesses. It was found that reasonable opportunity had been given to the employee in that case before he was disengaged. But in this case the applicant was not even given a show cause notice. Even after employment was denied to the applicant he made a representation to the second respondent on 4.2.1987 (Annexure-B) requesting that an enquiry may be held to find out the real facts. But the respondents refused to do so. So the facts and circumstances of the case under citation and those of this case are entirely different and therefore what is stated in that judgement will not hold good to the facts of this case. The learned counsel then invited our attention to a ruling of the Patna High Court (1987 LAB.I.C. 390) wherein it has held that when the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow no constitutional rights under Art. 311 can possibly flow from such a tainted force and that the person so employed should not get any protection under Art. 311 of the Constitution. This judgement was rendered in a case where a person had secured employment as an Assistant Teacher producing a false certificate that he belonged to ~~back~~ community. ^{to Backward} From the facts of the case, it was evident that the applicant had produced such a certificate and that he did not belong to that community. But in this case the applicant has not admitted that the service card produced by him is a bogus one. So the distinguished decision of the Patna High Court can clearly be on facts.

The respondents have denied employment to the applicant from 27.1.1987 onwards and the denial of employment is sought to be justified on the ground that the applicant obtained casual employment by producing a bogus service card. This justification comes only when the respondents filed a reply statement before the Tribunal. They did not even care to issue an order of termination of ~~their~~ services to the applicant. There is absolutely no evidence which would prima facie establish that the service card produced by the applicant is a bogus one. So unless it is established that the service card was ^a bogus one, it cannot be said that the applicant entered into service on the basis of a fraud played by him. Before giving notice to the applicant of the intention to terminate his casual employment for the reasons mentioned and without giving him an opportunity to defend himself or to explain his case, the respondents cannot justifiably terminate the services of the applicant. The denial of employment to the applicant from 27.1.1987 onwards is therefore found to be unjustified.

5. In the result, in the conspectus of facts and circumstances of the case, we allow the application and direct the respondents to reengage the applicant forthwith and to pay him full back wages from 27.1.1987 onwards. The backwages should be paid within a period of 3 months from today.

There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(P.S. Chaudhuri)
Admve. Member

8-3-1990

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