OA-220/86

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

1. Original Application No.219/86
KISMATRAM KEDARAM,
Jajjivan Nagar,
Halvapur, Kurla Pipe Road,
New Dobighat, Kurla,
Bombay - 400 070. .. Applicant

V/s

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

2. Original Application No.220/86
BHAGWAN KEDAR PASAWAN,
Mukund Nagar, Pestam Sagar,
Chembur - Bombay 400 089. .. Applicant

V/s

1. The Union of India through
The General Manager,
Central Railway,
Bombay.

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

3. The Divisional Electrical Engineer (TD)
Central Railway, Kurla,
Bombay - 400 070. .. Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL New Bombay Bench

3. Original Application No.221/86
GANESH HARICHARANRAM,
Anandwadi,
Kate Manvali Post,
New Bhihari Chawl,
Near Shivmandir, Kalyan (East),
Dist.Thane. .. Applicant

V/s

1. The Union of India through
The General Manager,
Central Railway, Bombay.

2. The Divisional Railway Manager,
Central Railway, Bombay.

3. The Divisional Electrical Engineer(TD),
Central Railway, Kurla,
Bombay - 400 070. .. Respondents.

4. Original Application No.34/87
KARAMUTTULA SAYYED KARIM,
Room No.390,
Laxmi Chawl, Takada Masjid,
Dharavi - Bombay 400 017.

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5. Original Application No.35/87
RAMBRIKSH RAMPADARTH,
R/o. Wakadi,
Walduni,
Lakdika Stall, Limaye Wadi,
Badlapur Road,
Post.Kalyan,
Dist.Thane

6. Original ApplicationNo.36/87
SHIVRAM SINGH VISWANATH SINGH THAKUR,
R/o. Bhim Nagar,
Behind Dr.Gopal's Hospital,
Ulhasnagar, Dist.Thane.

7. Original Application No.38/87
HANSRAJ PASSI,
Janata Mitri Mandal,
Near Barrack No.31/32,
Ulhasnagar-1, Dist.Thane.

8. Original Application No.39/87.
R.SEKAR RETNARAJ,
Block No.5, Row-C,
Room No.3, Transit Camp,
Dharavi - Bombay-400 017.

9. Original Application No.40/87
NAJIBUDDIN S/O MOINUDDIN,
Piran Budhan Ki Chawl,
Kurla Quresh Nagar,
Chawl No.461, Room Number No.3,
Bombay - 400 070.

10. Original Application No.41/87
SUDHAM SADASHIV MISAL,
Gourkamat,
Tal.Karjat, Dist.Raigadh,
GOURKAMAT.

11. Original Application No.42/87
D.P.JAGTAP,
R/o. Shinde Chawl,
Near R.T.C.Shantinagar,
Ulhasnagar No.3,
Dist.Thane.

12. Original Application No.43/87
BHARAT WADEKAR,
'B' Cabin, Shivaji Nagar,
Rajaji Jadhav Chawl,
Naupada, Thane.

13. Original Application No.37/87

Ram Sevak Singh,
C/o.L.M.Nerlekar, Usha Niwas,
140, Pandurang Naik Road,
Shivaji Park, B'bay.400 016.

.. Applicants

Vs

The Deputy Chief Engineer (Const),
Central Railway,
Bombay V.T. .. Respondents.

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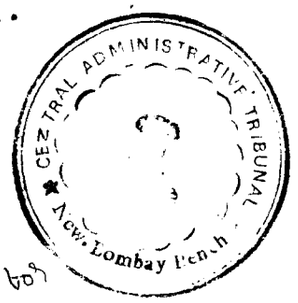
Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil.
Hon'ble Member(A) Shri L.H.A.Rego.



Appearances

1. Mr.L.M.Nerlekar, learned advocate for all the applicants.

Inserted vide Tribunals order dt. 27/8/87 in M.P. 302/87).

2. Mr.D.S.Chopra, learned counsel for the Respondents. and mr. R.K. Shetty for Respondents Nos. 219, 220 and 221/86.

JUDGEMENT (Per Shri B.C.Gadgil) Dated: 14.8.1987.

All these applications can be conveniently decided by a common judgement, as the controversy in all of them is the same. Initially, we will state in detail the facts in Original Application No.219/86 and thereafter briefly refer to similar salient facts in the remaining proceedings. The applicant in O.A.No.219/86 has been working as a casual labourer from 1983 and his case is that he had acquired temporary status. The Respondents contend that when the applicant was engaged as a casual labourer in 1983, he produced a bogus card of his previous service as casual labourer with the Railway Organisation. It appears that the Respondents had taken a decision that while employing persons as casual labourers, preference was to be given to those who had previously worked as casual labourers and whose services were earlier terminated for want of work. According to the Respondents they would not have employed the applicant as a casual labourer in 1983 if he had not rendered previous service in that capacity in the Railways. The grievance of the Respondents is that the applicant secured employment in 1983, by producing a bogus card with entries said to have been made by the Railway officials to the effect that he had rendered previous service as a casual labourer. The matter was investigated by the Railway Administration and according to them the said investigation proved that the card (of previous service said to have been rendered as casual labourer) produced by the applicant was bogus and forged. The Respondents therefore, issued notice to the applicant on 4.6.1986, stating that he had secured appointment as a casual labourer on production of a card

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which on enquiry, revealed that it was forged and bogus. For these reasons, the applicant was called upon to explain within 10 days as to why his services should not be terminated. On 1.7.1986 the applicant wrote to the Respondents' authorities, requesting for copies of the documents on which the Respondents would be relying upon to prove the allegations against him as being illiterate he would not be able to inspect these documents. He further requested that he may be permitted to take the assistance of an advocate to defend himself as the charge against him was serious. There was no response from the concerned authorities to this communication, but a communication dt.14.7.1986 was issued to the applicant terminating his services with immediate effect i.e. by the end of that day.

2. There are certain other averments about the earlier termination of services and reinstatement of the applicant. However, Mr.Nerlekar, Counsel for the applicant frankly stated before us, that that aspect was not relevant in this proceeding as he was restricting the grievance only with respect to the improper termination of services w.e.f. 14th July,1987. In substance, the contention of the applicant is that his service could not have been terminated in the light of the facts mentioned above and that it was necessary for the Railway Administration to hold a regular departmental inquiry as contemplated by the pertinent Railway Rules. Thus the applicant contends that in the absence of such a departmental inquiry termination of his service which cast a stigma on him was bad.

3. The Respondents have filed their reply, which contains a brief allegation. However, learned advocate for the Respondents frankly stated before us that he would be resisting the

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application only on the ground that a departmental enquiry was not necessary and that the action taken by the Respondents was legal and proper.

4. As we have stated earlier, the sum and substance of the allegations of the applicants and the Respondents in the remaining proceedings are similar to those mentioned above. When the matter was argued before us, the Respondents had not filed their reply in O.A.Nos 36,37,38,40 and 42/87. However, Mr.Chopra for the Respondents frankly stated before us that the Respondents' contentions in these proceedings, would be similar to those raised by the Respondents in other connected matters such as O.A.Nos. 34, 35, 39, 40 and 43/87. We informed Mr.Chopra that he may raise similar contentions during the course of the arguments even though a written reply was not filed in the above mentioned 5 cases. We may, in a nut shell, give in a tabular form the relevant dates about the entry in service, issue of notice, reply given by the applicant and the order of termination of service.

O.A.No. & Name of the applicant.	Date of entry in service	Date of notice by Rlys.	Date of reply given by applicants	Date of termination.
1) 219/86 Kismatram Kedaram.	9.12.83	4.6.86	1.7.87	14.7.86
2) 220/86 B.K.Paswan	9.12.83	12.5.86	-	10.7.86
3) 221/86 G.Hari-charanram.	9.12.83	4.6.86	1.7.86	14.7.86
4) 34/87 K.S.Karim	23.3.82	18.11.86	13.12.86	20.12.86
5) 35/87 Rambriksh Rampadarth	27.12.82	18/27.11.86	11.12.86	20.12.86
6) 36/87 S.S.Thakur	27.12.83	18/27.11.86	11.12.86	20.12.86
7) 37/87 Ram Sevak Singh.				
8) 38/87 Hansraj Passi.	1.4.84	18.11.86	1.12.86	20.12.86
9) 39/87 Shekar Raturaj.	6.2.84	27.11.86	13.12.86	24.12.86
10) 40/87 Najbuddin Moinuddin	22.4.83	18.11.86	1.12.86	16.12.86

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O.A.No. & Name of the applicant.	Date of entry in service	Date of notice by Rlys.	Date of reply given by applicants.	Date of termination.
11) 41/87 S.S.Misal	4.1.84	18.11.86	1.12.86	16.12.86
12) 42/87 D.P.Jagtap	18.3.83	18/27.11.86	12.12.86	23.12.86
13) 43/87 Bharat Wadekar.	27.3.84	18.11.86	3.12.86	20.12.86

5. It is needless to say that the notice mentioned in column No.3 is worded in a fashion similar to the notice issued to the applicant in O.A.No.219/86. The reply given by the above mentioned applicants is practically similar. Of course, in some cases copies of the documents were not called for but the allegation about the production of a fraudulent service card was denied.

6. Thus the only point that arises in all these matters is as to whether the termination of service of each of the applicants in the above fashion is legal or not. The contention of the Respondents is, that service of the applicants has been terminated on the basis of an event that took place before each of the applicants entered into service and that the production of a bogus card was antecedent to entry in service and production of such a fraudulent card would render the appointment of the applicants bad. It was contended that in such type of cases it is not necessary to hold any departmental inquiry under the Railway Rules. The argument is that such inquiry is called for whenever a Railway employee is said to have committed misconduct during the course of his service. Reliance in this regard is placed on the decision of the Patna High Court in the case of Ishwar Dayal Sah v. State of Bihar and another reported in 1987 Labour and Industrial Cases 390. In that case, one

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Ishwar Dayal Sah was appointed as a Teacher and at the time of his appointment he claimed that he belonged to Scheduled Caste and that he was entitled to appointment on that count. He joined duty in 1976. However, in 1983 it transpired that the applicant did not belong to Scheduled Caste and that his appointment to the post was irregular. No regular departmental enquiry as prescribed by the rules was held. However, a notice was issued to the applicant to produce the necessary certificate that he belonged to Scheduled Caste as the applicant gave an evasive reply, the administration issued an order terminating his services on the ground that he was appointed on production of a false certificate that he belonged to a Scheduled Caste. The order further stated that the explanation given by Ishwar Dayal Sah was found unsatisfactory. It is this order that was challenged by Ishwar Dayal Sah. The Writ Petition was dismissed by single Judge Letters Patent Appeal reported in the above publication. The Appellate Court held that Ishwar Dayal Sah had secured appointment on production of a false certificate that he belonged to a Scheduled Caste and that the background of such certificate was void ab initio and hence its cancellation would not amount to removal within the meaning of Article 311. The relevant head note reads as follows:

> "If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Art.311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Art.311 If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Art.311 is not attracted.....

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> The two basic postulates of Art.311(2), therefore, are a valid and lawful entry into the civil service and his subsequent misconduct or dereliction of duty during the holding of such a post, whereas in the case of the very cancellation of the original appointment neither of these two things will enter into consideration and the provisions of Art.311(2) cannot be attracted. "

7. The Patna High Court held that in such cases issue of a notice (as has been done in that case) was sufficient to constitute observance of rules of natural justice and that a detailed departmental enquiry was not necessary.

8. This judgment no doubt supports the contention of the Respondents. However, what is important is that in the Writ Petition that was filed by Ishwar Dayal Sah he had alleged that he had not produced the said certificate. He thus contended that he had not committed any fraud and that the office had committed a mistake in appointing him on the basis that he belonged to a Scheduled Caste. Apart from that, the above position may not be of much help to the Respondents in view of the Supreme Court's decision in the case of Jagdish Prasad v. Sachiv Zilla Ganna Committee reported in ATR 1986(1) (SC 197). The applicant in that proceedings namely Jagdish Prasad was previously working with the U.P.Roadways and his services were terminated on charges of corruption. Thereafter, he applied for fresh employment with another organisation viz. Sachiv Zila Ganna Committee. He was appointed in this organisation but at that time he concealed the above mentioned facts. A complaint was received by the employer that Jagdish Prasad had concealed this fact. The Employment Committee made some inquiries and thereafter issued a notice to Jagdish Prasad stating that he had secured the employment with the Ganna Committee by concealing the fact that he was involved in

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a corruption case when serving with Transport Corporation and that his services were terminated by giving one month's notice. By notice Jagdish Prasad was therefore called upon to show cause as to why he should not be removed from service. Jagdish Prasad asked for certain documents, but they were not supplied. However, he was shown a letter from the Roadways Department containing the above mentioned allegations. Thereafter the impugned order of termination of services was served on him. It is this order that was challenged by filing a Writ Petition. The matter ultimately went to the Supreme Court. The Supreme Court quashed the order and the material head note reads as follows:

> " Where from the order of termination itself it is evident that it was passed on the ground that the appellant concealed the fact of his removal from the service under the U.P.Govt. Roadways on charge of corruption at the time when he applied for the post of clerk under the Cane Society then such order of termination is not an innocuous order, but is an order which on the face of it casts stigma on the service career of the appellant and it is in effect an order of termination on the charges of concealment of the facts that he was removed from his earlier service under the U.P.Roadways on charges of corruption. This order undoubtedly is penal in nature having civil consequences and it also prejudicially affects his service career. Furthermore, this order of termination is considered alongwith the show cause notice will clearly reveal that the order of termination if considered along with the show cause notice will clearly reveal that the order of termination in question is not an innocuous order made for doing away with the service of the temporary employee like the appellant in accordance with the terms and conditions of his service. This order, is therefore, per se, illegal, arbitrary and in breach of the mandatory procedure prescribed by Regulation 68 of the U.P.Cane Co-operative Service Regulations 1975. The order made is also in utter violation of the principles of audi alteram partem "

9. It is needless to say, that Service Regulation 68 mentioned above, required that the delinquent had to

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be communicated the charge in writing along with the statement of allegations forming the basis of the charge. Thereafter, the delinquent had to submit his explanation in writing and then he was to be asked to indicate as to whether he desired to be heard in person. He had to be given inspection of all records, if he so desired. The delinquent was entitled to personal hearing and was tobe allowed to cross examine the witness. Thereafter the delinquent was to enter his defence and then in due course the necessary order was to be passed. It is not disputed before us that a similar procedure as contemplated by the Railway Rules for holding a regular departmental enquiry was not followed in the case before us. Thus the above mentioned decision of the Supreme Court, that a detailed departmental enquiry as prescribed by the rules is required to be held, even when an allegation is made about concealment of certain facts at the time of entry in service, has not been complied with in this case. If we accept the contention of the Respondents, such concealment will be preceding the appointment and it cannot be said to be a misconduct during the course of service. However, that contention has not been accepted by the Supreme Court.

10. In the present case it is common ground that the departmental enquiry contemplated by the Railway Rules has not been held. In the absence of such enquiry, termination of service on the ground of ~~necessity of~~ securing a service onthe basis of a forged service card would amount to penalty and such penalty has to be preceded by a regular departmental enquiry. In the absence of such enquiry the impugned order is liable to be struck down.

11. During the course of the arguments, it was faintly suggested that the applicant was a casual labourer and that

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it would be too much to expect an elaborated departmental enquiry in connection with the serious allegations of the nature mentioned above. It is true that a departmental enquiry is not mandatory in the case of a casual labourer. However, the applicants have pleaded that they have acquired temporary status. This averment has not been denied. It cannot be disputed that the Railway Rules about holding a departmental enquiry applied to casual labourers who had acquired temporary status. Hence it will not be possible for the Railway Authorities to overlook this requirement and to contend that the impugned order is good. The result is that each of the applicants succeed. The impugned orders mentioned in column 5 inthe statement in paragraph 4 above is quashed and the Respondents are directed to reinstate each of the applicants in service with full back wages from the date of termination of their service till their reinstatement along with other necessary perquisites admissible under the rules. It is needless to say that this order would not prevent the Railway Administration from holding a departmental enquiry as prescribed by the rules and passing appropriate orders on the basis of the evidence in such enquiries. Parties to bear their own costs of these applications. This judgement should be placed in O.A.No.219/86 and a copy thereof kept in the record of the remaining applications.

CENTRAL ADMINISTRATIVE TRIBUNAL New Bombay Bench

SECTION OFFICER
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