

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. 341/86 198
T.A.No. xx xx

DATE OF DECISION 25.8.1987.

Shri S.N.Nakade, Applicant/s.
Shri A.G.Phating Advocate for the Applicant/s.
Versus
Union of India & Ors. Respondent/s.
Shri V.G.REGE, Advocate for the Respondent(s).

CORAM:

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

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not ? No
3. Whether to be circulated to all Benches? No.

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

Original Application No.341/86.

Shri S.N.Nakade,
Behind Masjid,
Telipura,
Chhaoni,
Nagpur.

...Applicant

V/s.

1. Union of India in the
Ministry of Transport(Surface),
Represented through its Secretary,
New Delhi.
2. The Divisional Railway Manager,
Central Railway, New Fort,
Nagpur.
3. The Assistant Personnel Officer,
Central Railway, Office of the
Divisional Railway Manager,
Central Railway (Personnel Office),
Nagpur.
4. The Electrical Inspector
(Maintenance), Central Railway,
Wardha.

...Respondents.

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

Appearances:

Shri A.G.Phating, Counsel
for the applicant and
Shri V.G.Rege, Counsel for
the respondents.

JUDGMENT:

(Per Shri L.H.A.Rego, Member(A))

Dated: 25.8.1987

The main prayer in this application is to quash and set aside the impugned letter/notice dt.21.7.86 (Annexure 'E') and the order dt. 13.8.1986 (Annexure 'H') both passed by Respondents(R) 3, the latter terminating him from service, with effect from 13.8.1986A.N.

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2. Succinctly, the factual matrix of this case, in so far as it is relevant to the issues to be determined is as follows. For ease of reference, the accompaniments to the application are referred to, as Annexures and those to the reply of the respondents, as Exhibits. The applicant who was initially engaged as a monthly rated casual labourer, with effect from 18.10.1981, in the Central Railway, was later appointed to the Railway service, in the Electrical Department of the Central Railway, on a purely temporary basis, as Electrical Khalasi, on 4.7.1985, under an order of that date (Annexure 'C'), by R-3, in the grade of Rs.196-232, subject to the terms and conditions specified therein, one of which was, verification of his character and antecedents and other certificates. The Hindi version of this order is at Ex.'A'. This apart, the applicant had signed a form of declaration, on 3.8.1985 (Ex.'B') to the effect, that if it was noticed, that he had made any false statement in regard to any of the entries in the said form of declaration, he would render himself liable to be dismissed.

3. The respondents state, that on 10.2.1986, the Dy. Commissioner of Police C.I.D. (S.B. & Crime), Nagpur, had brought to the notice of the District Magistrate, Nagpur, that enquiry had revealed, that the applicant was involved in a case of gambling, that he was arrested and convicted by the JMFC Court No.6 Nagpur to undergo imprisonment. This fact is said to have been suppressed by the applicant, at the time he tendered the Attestation Form on 2.6.1985, to the concerned authorities. A warning was clearly indicated in print, at the very commencement of this Attestation Form, that furnishing of false information or suppression of any factual information in the said form, would disqualify the applicant and render him unfit, for employment under the Government. Yet, against S1. No.12(a) of the said form, against the particulars "Have

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you ever been arrested, prosecuted, kept under detention, or bound down/fined, convicted by a Court of Law for any offence etc. etc?" he falsely stated 'NIL'.

4. The applicant was therefore served a show cause notice by R-3, on 21.7.1986, (Annexure 'E'), as to why his services should not be terminated, on account of the above adverse report, received from the Police authorities in regard to his character and antecedents, as one of the terms and conditions of his appointment, was verification of the same. The applicant submitted his reply thereto, on 2.8.1986 (Annexure 'F') to R-3, who was the Appointing Authority, on examining which, R-3 took a decision on 13.8.1986 (Annexure-'H', which is the impugned order) to terminate his services, from that very date in the afternoon.

5. The respondents state, that the applicant has been paid an amount of Rs.2,278/- towards his emoluments, for a period of three months, in lieu of three months' notice and a further amount of Rs.1,898-90, on account of compensation, at 15 days for each completed year of service, for the period from 18.10.1981 to 13.8.1986, in accordance with the provisions of the Industrial Disputes Act, 1947

6. On 2.8.1986, (Annexure 'F'), the applicant had requested for a copy of the alleged adverse report on his character and antecedents by the Police, but was informed by the respondents on 1.10.1986 (Exhibit 'C'), that it cannot be furnished, being a "privileged document".

7. It is stated by the respondents, that the applicant persistently evaded service of the aforesaid termination order dt. 13.8.1986 (Annexure 'H'), on account of which, it had to be served on him by affixing the same, on the notice board, at the place of his work, viz. Electrical Inspector's Office, at Wardha, on 19.9.1986,

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in the presence of two witnesses. The respondents have brought to light, that the applicant while obtaining a medical certificate on 18.8.1986, from the Railway Doctor at Wardha, to cover his illness, ostensibly to avoid service of the termination order, had wilfully concealed from the Railway Doctor, that he was no more a railway employee, as his services were terminated with effect from 13.8.1986.

8. Aggrieved by termination of service as above, the applicant has approached this Tribunal for redress. Shri A.G.Phating and Shri V.G.Rege learned counsel, appeared respectively for the applicant and the respondents.

9. Shri Phating contended, that his client was regularised in the Railway service, by the respondents, with effect from 18.10.1984 and was treated as a regular employee from 4.7.1985; that during his fairly long period of service from 1978 (when he was initially appointed as a casual labourer), he had worked to the entire satisfaction of the respondents, without blemish in his career; that the sudden termination of his service, with effect from 13.8.1986, came to him as a great shock; that the respondents failed to furnish a copy of the police report (said to have been adverse in regard to his character and antecedents), even though he had requested for a copy of the same, to enable him to substantiate his defence, in reply to the show cause notice dt. 21.7.1986, which was clearly violative of the principles of natural justice as he was denied reasonable opportunity to defend himself; that R-3 made his client give a reply under duress, to show cause notice, on the basis of which, the order of termination of service dt. 13.8.1986 (Annexure 'H'), was passed by R-3, which is violative of Articles 14 & 16 of the Constitution and of the principles of natural justice; that his client was falsely implicated in a gambling offence, for which the Court imposed a penalty of only Rs.50/-, as is evident from Annexure 'I', which is minor in nature, as to have no consequence on the character and

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antecedents of the petitioner and that too from an incident dating as long back as 1982; that the police report alleged to have been received by the respondents, adverse to the character and antecedents of the applicant, is not factual and correct, as he was not sentenced to suffer R.I. for two months, in addition to fine of Rs.50/-, as stated in the said report, and consequently, the very basis of the letter/notice dt.21.7.1986 (Annexure 'E') and the termination order dt. 13.8.1986 (Annexure 'H'), pursuant thereto, are arbitrary and illegal and are therefore liable to be quashed and set aside; that though a stigma was sought to be attached to the applicant, by R-3, through his letter/notice dt. 21.7.1986, neither an opportunity of a personal hearing was afforded to him, nor was he furnished with necessary information and material, to help counter effectively, the allegations in Annexure 'E'; that the services of the applicant are governed by the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 (the 1968 Rules, for short), but no enquiry was held by the respondents, to substantiate the allegations in Annexure 'E' and the impugned order of termination dt. 13.8.1986 (Annexure 'H') was passed by R-3 summarily, thereby casting a stigma on the applicant, which violated the principles of natural justice, equity and fairplay, and therefore, that order, was not of termination simpliciter.

+0. In rebutting each of the above contentions, Shri Rege submitted, that the termination of service of the applicant by R-3, by his order dt. 13.8.1986 (Annexure 'H') was justified, on account of adverse antecedents of the applicant, as reported by the Police on 10.2.1986, which involved conviction in a Court of Law, in a gambling offence, which violated the terms & conditions of his appointment and in regard to which, he was alerted at the time of his appointment; that the report of the Police being an internal communication with the respondents, the applicant was not entitled to a copy thereof; that the applicant evaded service of the termination order dt. 13.8.1986 (Annexure 'H'), on account of which, the

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same had to be served on him through other lawful procedure; that the applicant intently suppressed in the Attestation Form and in his declaration, the details of his having been involved in a case of conviction by a Court of Law, even though, he was explicitly warned in writing, in both these documents, that in the event of furnishing false information or suppressing any factual information, he would render himself liable, for being declared unfit for employment under the Government; that the applicant was not compelled by the respondents to submit his reply dt. 2.8.1986, under duress as alleged; that the termination of service of the applicant was in accordance with the terms and conditions of his appointment and did not attract the provisions of the 1968 Rules; that the applicant was not falsely implicated in the gambling offence, as he had of his own volition, admitted the charge and pleaded guilty; & that conviction of the applicant in such an offence, could not be treated with levity, as it entailed moral turpitude and therefore, called for serious notice.

11. We have examined carefully, the rival pleadings and contentions, and the documentary evidence and other relevant material placed before us. There is no doubt, that the applicant was involved in an offence resulting in conviction, by the Court of Law in 1982, as is evident from Annexure I, furnished by the applicant himself. The applicant cannot exculpate himself of this guilt of conviction in a Court of Law, merely on the premise, of disparity in the nature of punishment as indicated in the above Annexure and the adverse report sent by the Dy. Commissioner of Police (SB and Crime) Nagpur, 10.2.1986, to the District Magistrate, Nagpur. The fact that the applicant was guilty of conviction in a Court of Law, reflecting on his moral turpitude, in either case, stands out unrebutted. In the Attestation Form signed by the applicant on 2.6.1985 and submitted to R-3, it is

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apparent, that he had in the context of the above background, made a false statement against S.No.12(a) of the said form, by making a nil entry, even though the applicant was clearly warned through a printed instruction, at the very commencement of the above form, that furnishing of false information or suppression of any factual information in the said form, would render him liable to be unfit for employment under the Government.

12. Shri Rege pointed out, that in his letter addressed to R-3, which bore no date but was received on 4.8.1986, the applicant had clearly made a mention of his having been convicted in an offence by the Court of Law. This letter was close on the heels, of the show cause notice issued to him by R-3, on 21.7.1986 (Annexure 'E'). It is evident therefrom, that the applicant was well aware of the reasons for issuing notice and was only feigning ignorance of the same, in his letter dt. 2.8.1986 addressed to R-3, in reply to the show cause notice, by asking for a copy of the alleged adverse report from the police, in regard to his character and antecedents as referred to therein, ostensibly to protract the proceedings and make a vain effort to wriggle off the punishment.

13. Shri Phating strongly relied in this regard, on the judgment of the Calcutta High Court in the case of THE STATE OF WEST BENGAL & ORS v MADAN MOHAN BAG (1977 SLJ 677). The facts in that case were, that the respondent/petitioner was unsuitable for employment under the Government. The respondent petitioner protested that this report was baseless. The report of police verification was not claimed as a "privileged document" in that case. The Learned Judge observed, that no prejudice would have been caused to the State authority, if a gist or extract of the police report of investigation, was furnished to the respondent/petitioner and he was given an opportunity to represent,

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if he so desired. Such a course, according to them, would have been in consonance with the principle to be followed by public and State authorities, in respect of public employment, under the rule of law. Since the above requirement was not complied with, the State authorities were directed, to disclose to the respondent/petitioner, within a stipulated period, the gist or extract of the police verification report, in so far as it was against the respondent/petitioner, so that he could represent against the same, if he so desired and the State authorities could consider this representation, in the matter of fresh appointment of the respondent/petitioner. The Learned Judge however, did not interfere with the impugned order of termination of service of the respondent/petitioner.

14. The facts of the case before us, are not wholly identical with the above case. While in the former, the applicant was well aware of the case of conviction in the Court of Law against him and could have linked it with the adverse police report against him, in the latter case, the respondent/petitioner, does not seem to have known the background, to the police verification report against him. Furthermore, in the instant case, the applicant had wilfully suppressed this fact, even though he was required to make a faithful entry in this regard, in the Attestation Form. In these circumstances, the applicant is clearly feigning ignorance of the police report in regard to his antecedents and is making a fetish of reasonable opportunity, having been denied to him, to plead his defence, on the specious plea, that a copy of the police report was not furnished to him. The case of MADAN MOHAN BAG is thus clearly distinguishable from the one before us. In the circumstances aforementioned, it would be not only futile, to furnish a copy of the police report to the applicant at this belated stage,

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when he was well aware of the background of that report, as is evident from Annexures - I and J to his application, and his aforesaid letter (without date) addressed to R-3 and received by him on 4.8.1986 - vide para 12 supra, but would be an inane ritual and formality, to no purpose. It is a queer irony, that the applicant who had initially suppressed this information wilfully from the respondents, is now for reasons best known to him, pleading ignorance of the same and asking the respondents, to enlighten him thereon. This in itself reveals the questionable antecedents of the applicant, on which ground, he forfeits sympathy. In the light of this factual background, we are of the view that there has been no travesty of justice against the applicant.

15. Though the show cause notice dt. 21.7.1986 (Annexure 'E') issued by R-3, could have been more precisely worded and a gist of the police report furnished to the applicant to bring out clearly, the reason for his contemplated termination of service nevertheless, viewing the background as a whole, in the light of the facts and circumstances aforementioned, it is apparent, that the applicant was not at all in the dark, about the adverse police report against him, as referred to in the above show cause notice, and therefore, it cannot be said, that he was denied fair and reasonable opportunity to substantiate his defence.

16. Being a railway employee, the applicant was governed by the 1968 Rules. Rule 14(1) ibid provides, that wherever a Government servant is to be punished on a criminal charge, it will not be necessary to hold a departmental inquiry, action being taken by the Disciplinary Authority, on consideration of the said ground of misconduct. The implication of this Rule was examined in depth by the Supreme Court, in the case of T.R.CHELLAPPAN SC 1975. The following dicta

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of the Supreme Court in the above case is pertinent:

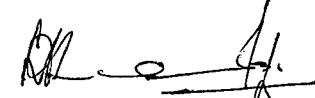
"It appears to us, that proviso (a) to Article 311(2) is merely an enabling provision and it does not enjoin or confer a mandatory duty on the Disciplinary Authority, to pass an order of dismissal, removal or reduction in rank, the moment an employee is convicted. This matter is left completely to the discretion of the Disciplinary Authority and the only reservation made, is that the departmental inquiry, contemplated by this provision, as also by the Departmental Rule is dispensed with".

17. In the light of the foregoing, we hold that the impugned letter/notice dt. 21.7.1986 (Annexure 'E') and the order dt. 13.8.1986 (Annexure 'H') terminating the services of the applicant, both issued by R-3 are legal and valid and that the application is devoid of merit. We therefore dismiss this application. No order as to costs.



(B.C.GADGIL)

VICE -CHAIRMAN



(L.H.A.REGO) 25.8.987

MEMBER(A).