

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 779/89 198
T.A. No.

DATE OF DECISION 15.2.1990

Shri Vedprakash Saini

Petitioner

Ms. Akhila S. Kaushik

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.M.A. Nair.

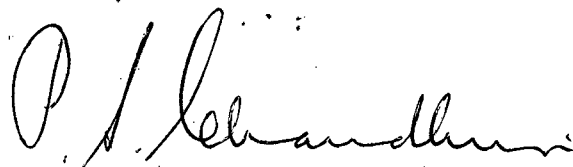
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. SREEDHARAN NAIR, Vice-Chairman,

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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(P.S. CHAUDHURI)
MEMBER(A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.No.779/89

Shri Vedprakash Saini,
309, Jaiprakash Nagar,
Bhayander (West),
District Thane, Maharashtra.

Applicant

V/s

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

2. Divisional Railway Manager(C),
Western Railway, Bombay Central,
Bombay-400-008.

3. Station Superintendent,
Western Railway,
Malad, Bombay-400-064.

Respondents

Appearances:

Miss Akhila S. Kaushik
Advocate for the applicant

Shri P.M.A. Nair,
Advocate for the respondents.

Coram: Hon'ble Mr. G. Sreedharan Nair,
Vice-Chairman

Hon'ble Mr. P. S. Chaudhuri,
Member(A)

Date of hearing 12-2-1990

Date of Judgement 15-2-1990

ORAL JUDGEMENT

(Per Mr. P. S. Chaudhuri, Member(A))

This application was filed on 11-10-1989 under
Section 19 of the Administrative Tribunals Act, 1985.

In it the applicant challenges the oral order of the
Station Superintendent, Malad discontinuing his services
as Mobile Booking Clerk (for short, MBC) with immediate
effect.

2. The facts. The applicant was employed on Western
Railway as a MBC from 1979. The terms and conditions of this
appointment were laid down in a notice dated 15-12-1979.

Clause (v) of this notice stipulated that "The deployment

will be purely on temporary basis and they can be discontinued without any notice." By a memorandum dated 16-3-1988 the applicant, (along with 26 others) was informed that as a result of screening of the MBCs held on 25-1-88 he was considered suitable for appointment as Commercial Clerk in the scale of Rs. 975-1540(RPS). The memorandum made it clear that his posting as Commercial Clerk would be subject to passing the requisite medical test and training at Udaipur. The applicant was sent for medical examination in which he passed. The applicant and the other 26 MBCs were then sent to the Zonal Training School at Udaipur for training from 27-4-1988 to 23-7-1988. While the applicant was undergoing this training at Udaipur, on 3-6-1988 there was a quarrel in which the applicant and S/Shri Dinesh Trivedi and Sanjay Sharma were involved. The incident was eye-witnessed by Shri K.G.K.Swamy, Senior Commercial Instructor in the Training School who submitted his report dated 3.6.1988 to the Principal. The statements of some of the persons involved were recorded the applicant expressed his regrets and prayed for forgiveness. The DEN(Training) at the Training School also submitted his report dated 6-6-1988. The Principal terminated the applicant's training and sent him back to his Headquarters. By order dated 12.8.1988, Station Superintendent (CBS), Malad was informed by DRM(C), Bombay Central that:

(7)

" The services of S/Shri Ved Prakash Saini (i.e. the applicant) and Sanjay B.Sharma, MBCs be terminated as they are not considered fit for Railway service. Date of their discontinuation should be advised to this office.

This is as per orders of Sr.DCS."

The services of the applicant were accordingly terminated by an oral order of the Station Superintendent, Malad. The applicant then appealed to the General Manager and also through several political channels but did not receive any reply. Being aggrieved he filed the present application.

3. The respondents have apposed the application by filing their written statement. We have heard Mr. M.S. Ramamurthy, assisted by Ms. Akhila S.Kaushik, learned advocate for the applicant and Mr.P.M.A. Nair, learned advocate for the respondents. Mr.Nair also showed us the record.

4. It was urged on behalf of the applicant that the termination of his services rested entirely on the foundation of the alleged incident at Udaipur. It was also urged that he was entitled to be heard before the competent authority took the decision to terminate his services. It was further urged that there was not even a written order of termination, let alone a reasoned, speaking order. It was emphasised on his behalf that the alleged incident cast a stigma on him and so the principles

2

Oh

8

of natural justice must be followed before any order was passed. The respondents attempted to counter this by submitting that the applicant was not deemed to be a Railway servant unless he is screened and after requisite training absorbed in the Railway service and so was not governed by the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968. We do not see any merit in these submissions of the respondents. The memorandum dated 16-3-1988 that we have mentioned earlier clearly states that the applicant had been screened. It also says that he was considered suitable for appointment as Commercial Clerk - it was only his posting as a Commercial Clerk that was subject to his training. The record shows beyond doubt that the foundation for the termination of the services of the applicant was the alleged incident at Udaipur. It is indisputable that this casts a stigma on the applicant. It is not disputed that the applicant was not heard before the order of termination was passed. It is also not disputed that the services of the applicant were terminated without notice and chargesheet. All that the respondents have to say about this is:-

"As regards letter dated 12-8-1988 it is submitted that the said letter is the internal correspondence of the Respondents which the applicant obtained by false means. It is submitted that as the applicant is in possession and knowledge of the

2

Am

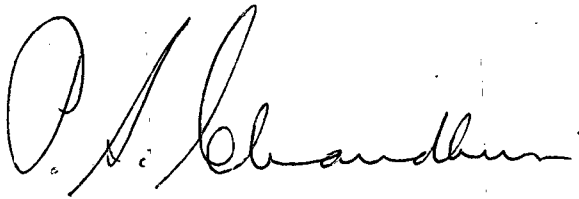
6a
said order dated 12-8-1988 which speaks about his termination the said order is deemed to be a notice duly served upon the applicant."

It is now well-settled that there must be a written order of termination of service. It is also well settled that the applicant must be heard before the order of termination of service^c is passed if alleged misconduct is the foundation of the order. There is a catena of decisions laying down that the principles of natural justice must be observed before an order which casts a stigma is passed.

5. In this view of the matter, the oral order of termination of service and the order dated 12-8-1988 are bad in law and cannot be sustained. We, however, take note of the fact that the applicant had not completed his training at the Zonal Training School, Udaipur.

6. In result, the application is allowed. The order of termination of the services of the applicant and the order dated 12.8.1988 (Exhibit 'B' to the application) are squashed and set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits other than backwages within a period of one month of the receipt of a certified copy of this order. The respondents are, however, at liberty to send the applicant for such training

as they consider necessary before posting the applicant as Commercial Clerk. In the circumstances of the case, there will be no order as to costs.



(P.S. Chaudhuri)
Member(A)


15.2.1990

(G. Sreedharan Nair)
Vice-Chairman.

Judgement dt. 15.2.90
served on R. No. ~~2183~~ 1403

11.4.90

MD
9/4/90