

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 784 OF 2005[Patna, this Wednesday, the 1st Day of October, 2008]C O R A MHON'BLE MR. JUSTICE M.RAMACHANDRAN, VICE-CHAIRMAN.
HON'BLE MR. AMIT KUSHARI, MEMBER [ADMN.]

Uma Shanker Verma, son of Sri Ram Shanker Verma, resident of village – Saidpur, P.O.: - Khagaul, Police Station – Khagaul, District – Patna.

.....APPLICANT.By Advocate :- Shri Gautam Saha.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. Chief Personnel Officer, East Central Railway, Hajipur.
3. Divisional Railway Manager, Dhanbad Division, East Central Railway, Dhanbad.
4. Senior Divisional Operations Manager, Dhanbad Division, East Central Railway, Dhanbad.
5. Divisional Operations Manager, Dhanbad Division, East Central Railway, Dhanbad.
6. Senior Divisional Personnel Officer, Dhanbad Division, East Central Railway, Dhanbad.

.....RESPONDENTS.By Advocate :- Shri Mukund Jee, SC.O R D E R

Justice M.Ramachandran, V.C.:- By Annexure-1, dated 11.10.2000 the Divisional Operation Manager, Eastern Railway, Dhanbad had informed the applicant that he was being removed from the service of the Railway. An appeal had been filed on 27.10.2000, but it stands dismissed vide Annexure-2, dated 27.03.2001 issued by the Sr. Divisional Operation Manager. These orders are under challenge.

2. The applicant had commenced service as a Guard [Group 'C'] on 16.12.1974 on special recommendation. He had been promoted as Guard [Group 'B'] in the year 1981. The career graph stopped thereafter. He had been suspended on 23.07.1987. A memo of charges had been issued on 01.01.1988, and according to the applicant he had refuted the allegations that were raised against him. The inquiry lingered for quiet a number of years which had prompted the applicant to file an OA as 114 of 1995. This Tribunal had passed final orders on the application on 08.05.2000, and a copy thereof has been made available, as Annexure-19. It had been observed that the long period of about 13 years of suspension was shocking to the conscience of the Tribunal, but it had been decided to set a time frame to the respondents to conclude the departmental proceedings. Consequently, it had been directed that the respondents are to conclude the pending inquiry within four months, and if not, the suspension was to stand vacated. There was also a direction that the CBI authorities, who were stated to be material witnesses, were to cooperate in the inquiry.

3. According to the applicant no further steps had been taken thereafter at the instance of the Inquiry Officer to conclude the proceeding. No documents had been produced, and no witnesses were examined, and he had received only a disagreement note dated 26.10.2000, a copy of which is produced at page 45 of the paper book along with Annexure-1. It is suggested that the inquiry report was not served on him. It is evident that he had recommended for discontinuing the proceeding as it was not possible to substantiate any allegation. The Disciplinary Authority had held that analysis

of materials disclosed that the applicant had not passed matriculation, nor completed the age of 18 years which were conditions precedent for entry in the Railway service. The order of removal came to be issued in this background.

4. It may be noted that allegation against the applicant was that he had managed to obtain a matriculation certificate from Central Board of Higher Education and in that certificate his date of birth had been recorded as 18.12.1955. It showed that he had passed in the second division. These were factually not true. It has been alleged that in the admit card the center of examination had been shown as Ravindra Madhyamik Vidyalaya, Patna though there was no such school in the said name at Patna. Thus, it is alleged that he neither passed matriculation examination, nor completed the age of 18 years.

5. On receiving the removal order the applicant filed an appeal but it had been disposed of by observing that the Sr. Divisional Operation Manager opted to agree with the observations of the Disciplinary Authority. This has resulted in filing of the instant OA.

6. Learned counsel for the applicant submits that as a confirmed member of staff, applicant was entitled to the benefit of 'Railway Servant [Discipline & Appeal] Rules'. It included the right of an inquiry to be held on charges framed and only on a report of the Inquiry Officer, for proper reasons, a punishment could have been imposed. He submits that although proceedings had been initiated, it did not get a conclusion as is expected under law because there was no witness examined to his knowledge, or no documents produced

for substantiating the allegations. According to the counsel he had produced a certificate from the Central Board of Higher Education, which evidenced that he had passed the examination and this alone was the document produced by him at the time of appointment. He had not filed any other certificate, and maintained that he was qualified for appointment, because of his educational attainments and came within the prescribed age. Counsel points out that notwithstanding the above, the Disciplinary Authority had opted to rely on certain extraneous materials never brought to his attention and principally, he had adopted a stand that the applicant was unable to explain as to how in the year 1974 he had appeared in the examination from two different educational institutions. Referring to the disagreement note, he submits that certain factual aspects have been adverted to which did not form part of the inquiry proceeding at any time. This amounts to violation of principles of natural justice if on that basis the impugned decision has been arrived at. The Appellate Authority, according to him, had committed the same mistake, although he had opportunity to set the matter right.

7. Relying on a number of documents the respondents have attempted to show that there was some amount of search, by the administration to unearth facts, and in fact they show that the applicant had claimed two dates of birth and had also claimed as having attained qualifications from different institutions simultaneously which was practically not possible. According to the counsel when per se this was the situation available, and when one of the document showed that he had failed in the examination it would not have been necessary to further prove the matter

through a departmental inquiry and the respondents were justified in coming to the conclusion now arrived at.

8. However, we find it difficult to accept this proposition. The learned counsel has urged decisions rendered by the Hon'ble Supreme Court, in 2007 [7] Supreme 165 [Shiva Anand Vs. Indian Airlines Ltd. & Ors.] as also 2007 [5] Supreme 174 [Addl. General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde], but they deal with altogether different factual situations. Production of false certificate for claiming employment, according to the respondents, could not have been tolerated and it was the duty of the administration to ensure that such a person was not to be permitted to reap the ^{benefits} ~~harvest~~. The methods used were fraudulent, and the Tribunal should not have interfered with such matter when there is at least some material to show that the applicant had been approaching the Tribunal with unclean hands.

9. There appears to be some delay, if the matter is strictly viewed. But the circumstances have been explained and rightly the respondents had not put any serious objections on the issue.

10. The fact remains that the respondents had no consistent case. In fact, there is submission forthcoming that there were institutes operating, in the country, which offer false promises to the students, and it is suggested that the Central Board of Higher Education which issued Annexure-R/11 certificate to the applicant, has been classified as a institute, which was not enjoying recognition from the Central Board of Secondary Education. The certificate, therefore, could not have been acceptable in any case. In support of

this reliance was placed on a press note issued by the Government of India as at Annexure-R/14[B]. This appears to be of 1987.

11. We can postulate a situation where the applicant had bonafide pursued his education, had appeared in the examination conducted by the Central Board of Higher Education, and had obtained a certificate, declaring him pass^{and} he had presented the same at the time of selection. If on scrutiny the respondents had any doubt about the veracity or adequacy of the certificate, it would have been possible for them to weed out his candidature at that point of time. As submitted by the learned counsel for the respondents, the applicant had been pursuing his study, like several others and had participated in the examination, and had come out successful. He had applied with his credentials with all bonafide and there was no element of fraud possible to be attributed against him.

11. By a proper inquiry it would have been possible for the respondents to unearth all attendant facts, since it was their primary duty to prove that here was a case of fraud and production of fake certificate, which automatically dis entitled applicant to claim employment. They could have suggested that his very employment was non est and he should not have, therefore, agitated over it as a matter of right. But, however, the inquiry had not been conducted inspite of the intervention by this Tribunal and they had proceeded to issue orders of removal practically over-reaching the report of the Inquiry Officer who had submitted report that there were no factual situation available to conclusively point out that the applicant was guilty of any falsehood or dubious acts which spoiled his candidature. On the other

hand the Administration has proceeded as if it is the duty of the applicant to show that he was innocent. Of course, such burden would have shifted to him, only if the Administration discharged their initial burden, that there was attempt of fraud. It is surprising that they have discontinued inquiry proceedings half way.

13. In the aforesaid circumstances, we have to hold that the removal order as well as appellate order were not called for and requires to be set aside.

We, therefore, quash the above two orders and hold that it has not been possible for the respondents to successfully prove the allegations that had been raised by way of Annexure-A/3. The applicant is to be reinstated in service forthwith.

14. Since we find that the applicant has partly contributed to the situation it may not be justifiable on our part to direct that full consequential benefits are to be extended to him. We direct that his service from the date of suspension till the date of reinstatement has to be considered as continuous for all purposes. He will be entitled to a fixation taking notice of the notional increments he would have drawn from time to time all throughout. But in matters of promotion, it may not be possible for us to direct that the benefits are to be extended as a matter of right since it may be necessary that such benefits could possibly be conferred only after departmental tests and assessment. We hold that however the applicant is to be paid an amount equal to 25% of salary he would have drawn had he continued in service uninterruptedly. For this purpose salary is to be reckoned as basic pay and DA

only. He will not be entitled to get the benefits of PF contribution, since we are curtailing the benefits as stated above.

Consequential orders are to be issued by the concerned respondents, taking notice of the directions as above made, latest by the 30th November, 2008.

We make no order as to cost.



[Amit Kushari]/M[A]



[M.Ramachandran]/VC

skj.