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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.s • 778/96, 785/96 & 786/96

Transfer Application No.

Date of Decision

29/10/97

Jaiprakash Yadav & Ors.

Petitioner/s

Shri G.S.Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. M.R.Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde
(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO.778/96, DA.NO.785/96 & DA.NO.786/96

Presented this the 29th day of OCT 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

1. Jaiprakash Yadav
2. Brij Mohan Yadav
3. Satish Kumar Tiwari

Khalasi, employed in the
O/O Divisional Mechanical
Engineer (Diesel), Western
Railway, Bandra, Mumbai.

C/o Radhakrishan G.Jangam,
Advocate, High Court, Mumbai.
Shiv Mandir, Dr.Ambedkar Road,
Mulund (West), Mumbai.

By Advocate Shri G.S.Walia

... Applicants

v/s.

Union of India through

1. The General Manager,
Western Railway, HQ Office,
Churchgate, Mumbai.
2. The Divisional Railway Manager
Western Railway, Divn. Office,
Mumbai Central, Mumbai.
3. The Divisional Mechanical
Engineer (Diesel),
Western Railway, Diesel Loco Shed,
Bandra, Mumbai.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R

(Per: Shri M.R.Kolhatkar, Member (A))

As in these three OAs. the facts are identical and arguments ~~were~~ similar, the same are being disposed of by a common judgement. The facts in OA.NO.778/96 are taken as illustrated. In OA.NO. 778/96 the applicant has impugned the order dated 3.8.1995 issued by DME (D) Bandra terminating his services with immediate effect for the reasons given therein. According to the applicant, Exh.'A' dated 20.4.1995 is his appointment order, the same is reproduced in full :-

"The following staff whose request has been accepted by the comp.auty. for posting as Khalasi, Scale Rs. 750-940(RS) under you. Accordingly, they are directed to you with instruction to report to you for their posting as Khalasi Scale Rs.750-940 (RS) on pay Rs.750/-p.m. They may be posted as Khalasi against existing vacancy. Date of joining may be advised to this office. (1) Shri Yadav Brijmohan, (2) Shri Tiwari Satish K. (3) Shri Yadav Jaiprakash. This has the approval of Comp.Auty.(DME)."

The applicant states that prior to his appointment, he was subjected to medical examination and certificate of physical fitness of candidate was issued to him dated 14.3.1995 at page 11. At page 12 is the Identity Card issued to him. At page 13 is the Railway Pass issued to him. At pages 14 & 15 are the pay slips. At pages

copies of 16 to 32 are correspondence relating to criminal complaint against the applicant in connection with alleged fraudulent recruitment as Khalasi. According to the applicant, the very fact that he was subjected to medical examination shows that he has gone through recruitment procedure also and he has produced other documents showing his bonafide status as Railway employee. Inspite of this, on 12.7.1995 the DME(D), Bandra issued him a show cause notice vide Ex. 'F' at page 32 giving him 3 days time alleging that he has procured employment by producing forged and false documents. The applicant gave a reply at page 33 in which he denied the allegations. He stated therein that under he has gone various tests, interviews and medical examination etc. and thereafter he was lawfully appointed as Khalasi ~~still~~ the impugned order dated 3.8.1995 was issued by the DME terminating his services.

2. The contention of the applicant that he is an ITI certificate holder and his appointment was by the competent authority who is the Senior DME. The same is signed by APO on behalf of Senior DME. Therefore, his appointment could not have been terminated by ^a lower authority, namely, DME which ~~a~~ violation of Protection Guranteed to Civil Servant under Article 311 of the Constitution of India. The counsel for the applicant contends that since his was a regular appointment and not an appointment on casual basis, he would be subject to probation and subject to satisfactory completion of probation, he is required to be confirmed. He is, therefore, required to be considered either as a temporary

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Government employee pending confirmation or a permanent Government employee awaiting completion of probationary period. In either case, his services cannot be terminated by a show cause notice giving him only 3 days' time to file a reply making baseless allegations of ^{the} use of forged and false documents for securing appointment. According to the applicant, this Tribunal in OA.NO.147/96 and other OAs. decided on 29.2.1996 which is an order of same Bench has held that even though there were allegations of cheating the Government similar to the allegations in the present OA. the applicants who were casual labourers had worked for attained six months and had ^a temporary status and since ^a casual labourer who had attained temporary status is entitled to have the benefit of IREM 2511. The Tribunal restrained the respondents from terminating the services of the applicants except by resorting to departmental proceedings in terms of IREM 2511. According to the applicant, there has been a subsequent judgement by this Tribunal in OA.NO. 220/96 decided on 6.6.1997 in which a different view has been taken. It is held therein that since the applicant had secured appointment by forging the signature of General Manager, ^{from} the appointing authority is not precluded ^{from} taking any action under the rules, more so when the appointment is temporary and when an appeal is ^{of the} Tribunal not filed. According to him, this order ^a is under challenge in High Court and that this Tribunal should adhere to their decision in OA.NO. 147/96 and hold that since regular departmental proceedings as ^a for major penalty have not been resorted to and the applicants have been terminated after

a summary enquiry ^{without} giving them a full opportunity to show cause why they should not be terminated, the termination order should be held to be void. The counsel for the applicant contends that his reply to the show cause notice clearly shows that he has denied the allegations. The Railway authorities were bound to hold a regular departmental enquiry to establish the charges against the applicant. The DME while passing a termination order had recorded that the applicants have resorted to false and fraudulent means for securing appointment. But he has recorded this finding without any evidence and if there was evidence, the same was not disclosed and therefore the order is liable to be set aside.

3. The respondents have opposed the OA. The respondents have distinguished the present OA. from OA.NO.147/96. The present applicant has served for only 80 days, which is not enough for conferring temporary status even on ^a casual labourer. According to the counsel for the respondents, the ratio of the Tribunal's decision in OA.NO.220/96 squarely applies to the facts of the case. Assuming that the applicant is covered by Railway Servants (D & A) Rules, he has not availed of the remedy of appeal and on that also ground the OA. should be dismissed. But more importantly the counsel for the respondents had contended that if the OA. is allowed, it would amount to perpetuation of the fraud as has been pointed out in the order of termination. The recruitment process involves a procedure of inviting applications, scrutinising the applications, making a panel, ^{and} thereafter, going through pre-recruitment

formalities and thereafter issue of appointment order. The appointment order filed by the applicant is, on the face of it, a forged one because such appointment order is not issued by the Railways. The order states that "request for appointment is accepted for posting as Khalasi". But the concerned department at Bandra had no vacancies no recruitment programme. office/ The respondents have duly complied with the principles of natural justice by giving the applicant an opportunity of producing documents, such as advertisement of posts, application given by him, the test taken by him and other such documents. But he was not at all able to produce the same and therefore the department lodged a complaint with the Police and independently they took departmental action of terminating the services of the applicant because the appointment order/ forged one.

4. Learned counsel for the applicant has relied on several judgements of which the more important and relevant ones may be referred to. In Kamal Kishore Lakshman vs. Management of M/s. Pan American World Airways Inc. & Ors. AIR 1987 SC 229, the Hon'ble Supreme Court has held that "if disciplinary inquiry has not preceded the prejudicial order in the case of a Government servant the action would be bad while in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier." In the present case, admittedly, order of termination cast a stigma on the applicant and it ought to have/departmental proceedings. In Director General of Police & Ors. vs. Mrityunjay Sarkar & Ors.

1996 SCC (L&S) 899, the Supreme Court held that "the order of discharge having been passed without affording reasonable opportunity of representation in departmental enquiry and without giving reasons ^{Counsel} was rightly set aside by the High Court." L showed the Circular of the Railway Board dated 23.8.1977 which enjoins on the Railway authority that the termination order should be issued only by the appointing authority. He also relies on the well known judgement in Parshotam Lal Dhingra vs. Union of India, AIR 1958 SC 36, which has laid down that not only permanent but even temporary public servants or ^{are} those ^{on probation} L entitled to protection under Article 311 if the services are sought to be terminated by way of penalty.

5. counsel for ^{the} respondents have relied on ^{the} Principal Bench judgement in Sanjiv Kumar Aggarwal & 3 Others vs. Union of India & Ors., 1987 (3)(CAT) SLJ 353.

6. We have considered the matter. It is not necessary for us to go into the question as to which judgement of this Tribunal applies to the facts of the present case, namely, OA.NO. 147/96 or OA.NO.220/96. It appears to us that the Principal Bench judgement in Sanjiv Kumar Aggarwal fully covers the facts of the case. That was the case in which the applicants had produced appointment orders on the basis of lists allegedly sent by Staff Selection Commission and later on it turned out that those lists were not genuine and probably there was fraud either in the department

or in the office of Staff Selection Commission or on the part of applicants. The plea was taken before the Tribunal that the applicants were appointed on the basis of valid appointment orders and they have a vested right and their appointment could not be terminated except by resorting to departmental proceedings as for a major penalty. The Tribunal made important observations in Para 14 of the judgement.

"14. While the applicants may have a right to move this Tribunal questioning the orders of termination, the Tribunal which is a substitute for the High Court, has the discretion to refuse relief having regard to the circumstances of the case. Even if the relief were claimed in a suit under the Specific Relief Act, the applicants are not entitled to a decree for reinstatement in service merely because the order of termination is bad. Unless the Tribunal is satisfied that the Plaintiffs were eligible for appointment and that they had come to the Court with clean hands, even the Civil Court was not bound to grant them specific relief of reinstatement in service. So too, the Tribunal is not obliged to grant any such relief. The process of the Court cannot be allowed to be used for a purpose which would perpetuate an illegality and defeat the ends of justice. The ends of justice would certainly be defeated if while eligible candidates are denied appointments, the applicants who are not eligible are restored to service. The Tribunal should therefore refuse to grant any relief to the applicants."

7. The Tribunal earlier observed in Para 13 that "Quashing such orders of termination, would revive appointments which should never have been made." In Para 17 it is observed that if the basic requirements are found to be incorrect, the orders of termination cannot be said to be invalid. On the point relating to departmental proceedings, the Tribunal observed in Para 29 that :-

"Termination of such an appointment can neither be deemed to be arbitrary nor to be by way of penalty. Offer made on assumption of facts which are not true, is not a valid offer of appointment. There can be no valid acceptance of such a offer, especially by a person who accepts the offer knowing that material statements in the offer are not true. Consequently, there was no valid contract. Any agreement which never fructified into a valid contract cannot give rise to a status which the Tribunal is obliged to protect. Assuming that such termination order should have been preceded by an inquiry in accordance with the CCS(CCA) Rules (which, in our opinion, is not required) and such an inquiry not having been held, the orders of termination are bad, even then if the Tribunal finds that quashing these orders would result in reviving appointments which should never have been made, would not issue any writ, direction or order. Granting any relief to the applicants would amount to allowing them to abuse the process of court. The Tribunal, therefore, declined to grant any relief to the applicants. For the aforesaid reasons, the impugned orders do not call for interference."

8. Considering the ratio of the judgement in relation to the present OA., we are of the view that the appointment of the applicant was obtained by fraud. Apart from the medical certificate, there are no pre-recruitment documents which the applicants were able to produce before the respondents. The applicant did not have any material to show that there was any recruitment process through which the applicants had come. Therefore, the appointment order never existed and therefore any question of acting on that appointment orders and giving them protection of Railway Servants (Discipline & Appeal) Rules does not arise. The basic

Assumption relating to status of Railway servant is lacking and any quashing of termination order would amount to revival of illegal appointments.

9. We are, therefore, of the view that the OAs. do not have any merit and the same are dismissed.

M.R. Kolhatkar

(M.R. KOLHATKAR)

MEMBER (A)

B.S. Hegde

(B.S. HEGDE)

MEMBER (J)

mrj.