BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NOS: 147/96, 176/96, 177/96, 178/96, 179/96, 180/96 AND 181/96

Pronounced this, the 29 day of February 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)
HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. Dinesh Kumar Singh .. Applicant in O.A. 147/96
2. Manoj Kumar Singh .. Applicant in O.A. 176/96
3. Vaseem Ahmed .. Applicant in O.A.177/96
4. Navneet Kumar Pandey .. Applicant in O.A.178/96
5. Saroj Kumar Shukla .. Applicant in O.A.179/96
6. Shakeel A.Nabi .. Applicant in O.A.180/96
7. Mahendra Pratap Tripathi .. Applicant in O.A.181/96

(By advocate Shri G.S.Walia)

-versus-

Union of India through G.M. Western Railway & Ors. .. Respondents in all the above OAs

(By counsel Shri V.S.Masurkar)

ORDER

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

The main question to be decided in these seven cases is whether the interim relief which was granted, first in O.A.147/96 and thereafter in the remaining OAs is to be continued or not. We take facts in O.A. 147/96 as illustrative. The applicant was appointed as a Group'D' employee/ substitute employee in the Electric(Traction) Department of Bombay division, Western Railway by an order dt. 18-5-95 placed at Ex.'A' to the application. The applicant along with some others was given

...2/-

temporary status after putting in 120 days of continuous service. The applicant at the time he approached this Tribunal on 14-2-96 apprehended that his services are likely to be terminated without any notice. The applicant says that subsequently he received showcause notice dt. 17-2-96 which was in following terms :

> "On detailed investigations,it has come to light that no such letter was issued from Headquarter Office,Western Railway, Churchgate, nor the Competent Authority & General Manager has approved your engagement as a Substitute as per extant rules. Now since the very basis for issue of engagement letter as referred to above is based on a forged and fake document, the engagementoffered to you is required to be treated as cancelled and services terminated.
>
> You are hereby required to submit your written explanation to the above charges within 3 days of the serving of this show cause notice, failing which it will be presumed that you have no explanation to offer in this regard. The Railway Administration thereupon shall be at liberty to proceed further in the matter, as deemed fit, without any further notice/communication to you. "

The applicant did not give a reply to the showcause notice but instead thereof asked for copies of documents including investigation report.

2. The main contention of the applicant is that having attained temporary status he is entitled to the benefit of Rule 2511 of the Indian Railway Establishment Manual according to which the benefit

...3/-

of discipline and appeal rule is extended to casual labour treated as temporary. Therefore, the proceedings under Railway Servants(D&A)Rules ought to have been taken against the applicant. According to counsel for the applicant the showcause notice is merely a formality and a bare reading would show that the respondents have already made up their mind to terminate the services of the applicant. The applicant relies on the judgment of this Tribunal in O.A. 348/87 Hanmanta Sayappa and 9 Ors. vs. Central Railway decided on 8-7-1992 when the court has disposed of the application for reasons which appeared in para-3.

> "3. Mr.Sawant who appears on behalf of the respondents has very fairly stated that the applicants are under some mis apprehension. The notices were sent with a view to initiate disciplinary proceedings. He assured us that the authorities concerned will pass further orders, if necessary, after complying with the provisions of law and rules. In view of this statement, the grievance of the applicants does not survive."

The counsel for the applicant also relies on T.A. 728/86 decided by Calcutta Bench of the CAT on 31-8-1987 where the orders of termination of the applicants were set aside because no opportunity was given to the applicants for explanation and their services were terminated without any departmental enquiry.

3. The learned counsel for the respondents has sought vacation of interim relief which was granted

... ..4/-

in O.A.147/96 on 14-2-96 and which was granted in other cases on subsequent dates but which have come up before us today as a group of seven matters. According to him the O.As in which the impugnd orders are not filed are liable to be dismissed on the ground of violation of provision of A.T.Act. Secondly the OAs are premature because the applicants have been given full opportunity of showcause against the termination order. Thirdly it is contended that the applicants have not approached the Tribunal with clean hands, inasmuch as they are involved in getting employment on the strength of forged documents. Fourthly it is contended that in the Calcutta case cited by the applicant no interim relief was granted. Fifthly it is argued that the Tribunal has no jurisdiction because it is well settled that when the employee indulges in action of cheating, the contract of employment was voidable at the option of railway administration. The matter is entirely between the employer and the employee and the Tribunal has no jurisdiction.

4. We have considered the matter. We do not go into the formal aspects of the matter as to whether interim relief can be granted on mere apprehension since the impugnd showcause notice has since been made available. Regarding applications being premature on the ground of failure to reply to show cause notice, counsel for applicant pointed out that in a case where the reply was given services have in fact been terminated. We have reproduced the showcause notice. In our view, the showcause notice as given does not amount to giving an opportunity to the applicants to showcause against termination and it does, prima-facie, indicate a prior decision to terminate the services. Although

...5/-

the respondents have contended that the letter of Railway Board dt. 19-6-1995 and the letter from the office of General Manager in terms of Railway Board's letter is false and fictitious and there are about 30 such cases, We have not been shown any general order of the railway administration setting out all facts and circumstances and cancelling the appointment orders which are vitiated by fraud. We are therefore of the view, that we are bound by the ratio of O.A.348/87 which was a case pertaining to Central Railway in which on a concession given by the counsel for the railways the bench had disposed of the matter. In the present case the reference by the counsel for the respondents to the employment contract being voidable at the option of the employer appears to refer to the ratio laid down by the Supreme Court in the case of Union of India & Ors. vs. M.Bhaskaran, 1996(1)SCSLJ(1) wherein it is stated by the Supreme Court in para 6 that:

> "If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would

..6/-

amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice."

In that case, however, the apex court set aside the order of the C.A.T. Ernakulam Bench which had interfered with the order of termination which was passed after following the procedure laid down in the Railway Servants (D&A) Rules on the ground that there was no misconduct. Thus the observation of apex court regarding the voidable appointment order cannot be read in isolation and must be read in the facts and circumstance of the case. It is nobody's case that any opportunity under Railway Servants(Discipline & Appeal)Rules has been given to the applicants. We are also inclined to agree that the applicants having attained temporary status are entitled to have the benefit of IREM 2511 as contended by the counsel for the applicant.

5. We heard the matter on 26-2-96 and passed the following order :

"Heard Shri Walia for the applicant and Shri V.S.Masurkar for the respondents. Orders on I.R. reserved. I.R. passed earlier shall continue till pronouncement of the order. The respondents are directed to file their reply. The matter be listed on 29-3-96 for admission hearing."

..7/-

6. In the light of above discussion we recall our order mentioned above fixing the matter for admission hearing on 29-3-96 and dispose of the O.As at the admission stage by passing the following order : admit the OA's.

O R D E R

Respondents are restrained from terminating the services of the applicants in terms of showcause notice dt. 17-2-96. Respondents, however, are at liberty to take departmental proceedings in terms of IREM 2511 and act in terms of those proceedings.

There will be no order as to costs.

(M.R.KOLHATKAR)
Member(A)

(B.S.HEGDE)
Member(J)

M