

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: -----

894/99

Sunil Tukaram Naik

By Advocate Shri V. G. Rege.

VERSUS

Union of India & ors.

By Advocate Shri S. C. Dhawan.

CORAM : Hon'ble Shri Kuldip Singh - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

(i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library ?

Sh
(Shankar Prasad)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 4th day of July 2003

Coram: Hon'ble Mr.Kuldip Singh - Member (J)
Hon'ble Mr.Shankar Prasad - Member (A)

O.A. 894 of 1999

Sunil Tukaram Naik,
Indian Inhabitant,
R/o Railway Colony, RB/I/III/5,
Kurla, Mumbai.
(By Advocate Shri V.G.Rege) - Applicant

Versus

1. Union of India
through the General Manager,
Central Railway,
Mumbai, CSTM.
2. A.S.Umat,
Assistant Operating Manager (G),
Mumbai, CSTM.
3. M.S.Mathur,
Divisional Operations Manager (Goods),
Mumbai, CSTM.
4. Sajal Mitra,
Sr.Divisional Operating Manager,
Mumbai CSTM.
5. P.K.Shrivastava,
Additional Divisional Railway Manager (O),
Mumbai, CSTM.
(By Advocate Shri S.C.Dhawan) - Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (J) -

The applicant was proceeded against departmentally and the disciplinary authority vide his order dated 27.11.1996 imposed the penalty of removal from service. An appeal was preferred against the said order and the same was dismissed vide order dated 21.7.1997. The Revision Petition was dismissed vide orders dated 24.2.1998. The applicant also filed mercy petition dated 15.1.1999 which was also rejected by the Additional DRM. Aggrieved by these orders the applicant has preferred the present O.A.

2. The case of the applicant in brief is that a charge sheet dated 15.11.1994 was served on the applicant in respect of the misconduct and on charges mentioned therein.

The disciplinary authority also simultaneously appointed an Enquiry Officer in disregard of Rule 9 (2) of Railway Servants (Discipline & Appeal) Rules. The charge sheet has been issued on the dictates of the Vigilance Wing. The charge sheet is accordingly vitiated. The applicant has relied on the decision of Apex Court in Union of India Vs. B.N.Jha, 2003 (4) SCC 531.

3. The applicant was not given access to original documents which have been relied upon in the charge sheet and he has been given only the photocopy of the documents. As they relate to interpolation in some of these documents, the applicant has been denied an opportunity. Besides this the copy of the statement dated 16.5.1991 and 27.3.1994 was not at all supplied to the applicant.

The prosecution witness has also not testified about his giving a sum of Rs.10,000/- to the then OS -II. Under the circumstances, the Enquiry Officer has erroneously come to the conclusion that the charges have been proved and it is a case of perverse finding. He has relied on the decision of the Apex Court in Kuldeep Singh Vs. Commissioner of Police, 1999 SCC (L&S) 429. *An*

4. The further case of the applicant is that in an identical case of Mr.P.Pon Raj he has been let off with a much lighter penalty of reduction to lower stage in the same scale of pay for a period of five years . It was further directed that on expiry of the period, it will have the effect of postponing future increments.

5. The case of respondents in brief is that the applicant had filed a mercy petition and, therefore, as per the decision dated 4.11.1999 of this Tribunal in OA 598/93 (J.J.Sequeira Vs. Union of India) the applicant has admitted his guilt and cannot challenge the orders.

The original documents were with the applicant and from him it was to be taken over for sending it to the Railway Board. As the original documents were not available with the disciplinary authority, the same could not be supplied to the applicant. However, no prejudice has been caused.

6. The further case of the respondents is that Rule 9 (6) of the Railway Servants (Discipline & Appeal) Rules indicates that the disciplinary authority shall draw up or cause to be drawn up the articles of charge. It is accordingly clear that they can rely on information from any source and can ask even the Vigilance organisation to draw up the charge sheet. The use of the word 'draft' does not make the charge sheet vague or illegal. What Rule 9 (2) only requires is that there should be

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be application of mind before coming to the conclusion for issue of charge sheet and the same was considered before issue of charge sheet.

As per Railways Board's circulars Enquiry Officer can be appointed along with issue of charge sheet though enquiry will commence after receipt of reply.

The Principal Bench in the case of Sanjiv Kumar Aggarwal & ors. Vs. Union of India & others, (1987) 3 ATC 990 has held that fraudulently appointed persons cannot invoke equity.

He has also relied upon decision in Union of India Vs. M. Bhaskaran, 1996 (1) SC SLJ 11.

5. It has been vehemently argued by the applicants that the enquiry is vitiated for non-furnishing of documents. He could not furnish his reply for want of documents. The enquiry is accordingly vitiated. It has been urged in Para 4 (o) that charge is in three parts namely that appointment was made against ST quota, that forged and fabricated documents were used and that bribe was paid for securing appointment. The case of applicant was that he belongs to general category, the documents were fabricated by OS Shri David John and that he had given the money as advance. A.

The lone prosecution witness was the person who conducted the vigilance enquiry. During the Examination-in-chief he has certified the documents relied upon. During cross-examination he has stated:

"An enquiry has been made in Vigilance Department to collect the above referred original documents, the Vigilance Officer has told me that the above documents are required by Railway Board in connection with DAR case of Shri David John. But the same has not been submitted by the employee so far. The same will be called for from Shri S.J.Naik and will be produced at the time of enquiry."

6. The report of the Enquiry Officer further indicates that the report is based on statement of delinquent during preliminary enquiry, statement given by him as a prosecution witness during another enquiry and the call letter sent to him that vacancies for Scheduled Tribes.

7. It may be noted that Apex Court in the case of Union of India Vs. Ravi Shanker has held that appointment made in violation of a mandatory statutory rule is void and illegal. It has been held by Apex Court in U.P.Junior Doctors Action Committee Vs.Dr.B.Sheetal Nandwani, 1996 (2) SCC 498, that where a benefit is obtained by committing fraud, the authorities are not obliged to follow the principles of natural Justice before cancelling the appointment obtained by such fraud.

The Apex Court in the case of Aligarh Muslim University Vs. Mansoor Ali Khan, 2000 SCC (L&S) 965 has reiterated the doctrine of useless formality.

The Apex Court in the case of Chandrama Tewari Vs. Union of India, AIR 1988 SC 117, was considering the question as to whether non-supply of a copy of document which is not relied on by the Enquiry Officer to support charges amounts to violation of principles of natural justice. The Apex Court in the case of Chandrama Tewari Vs. Union of India, AIR 1988 SC 117 held as follows -

" It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question, it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other documents which may have relied in support of the charges. If the document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or

if such documents are material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon supply of copies of such documents as the absence of copy of such documents will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case. Case-law dismissed."

8. We have noted that the order of the Enquiry Officer is based on three key documents. The statement of the applicant in preliminary enquiry, the evidence given by applicant in another enquiry and the call letter issued to the applicant before appointment. No other document mentioned in the charge sheet has been relied upon. The applicant was surely aware of these documents. Thus even if we do not enter into the question that the originals were with applicant and that he did not make the same available as has been asserted by the respondents in para 19 of the reply and which has not been specifically controverted in the rejoinder, we are of the view that the principles of natural justice have not been violated with regard to what has been discussed above.

9. The applicant had also challenged the issue of charge sheet. As per the decision of the Apex Court in ^{DIG vs K.S. Swaminathan} 1996 (2) SCC 498, It is clear that the same can be challenged on the ground that it has been issued by an authority not competent to do so or that the charges are not sustained by the documents enclosed with the charge sheet. The applicant had relied on the decision of the Apex Court in Union of India Vs. B.N.Jha (supra). The said

decision is a decision under BSF Act and the rules framed thereunder. It was a case where the enquiry had been initiated on the directions of a superior officer and the same had not been controverted. The said decision is clearly distinguishable.

10. In view of what has been discussed above, the issuance of charge sheet cannot be faulted. It was further argued that in view of the facts and circumstances of the case, there was no evidence on record to enable the Enquiry Officer to ^{come} go to the finding. It has nowhere been argued as to why the findings are perverse. The applicant himself admits that he is not a member of Scheduled Tribe category while the appointment on the face of it is for a post reserved for ~~principles~~ ^{members} of Scheduled Tribe category. He further admits of having giving this loan to OS David John but has ~~not~~ ^{brought} no evidence on record to suggest that the said loan has been repaid. As has already been indicated in para 7 above, persons appointed dehors the rules have no right against the said post and in case of illegal appointment, appointment can be terminated. The Apex Court in the case of Union of India Vs. M.Bhaskaran, 1996 (1) SC SLJ held as follows -

".....Therefore, even independently of Rule 3 (i) (i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and in such cases merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer. In this connection we may usefully refer to a decision of this Court in District Collector & Chairman, ^{JK}

Vizianangaram Social Welfare Residential School Society, Vizianangaram & another Vs. M.Tripura Sundar Devi (1990) 3 SCC 655. In that case Sawant J. Speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice."

11. In view of what has been discussed above, the applicant has failed to make out a case in interfering with the finding of fact of the Enquiry Officer. The role of the Tribunal is also extremely limited. Thus the challenge on the ground of finding being perverse also fails.

12. The last point which has been urged on behalf of the applicant is that a similarly situated person has been let off with a lighter punishment. The Principal Bench of the Tribunal in Sanjiv Kumar Aggarwal (supra) following the decision of Apex court in Gadde Venkateswara Rao Vs. Government of Andhra Pradesh, AIR 1966 SC 828 held as follows -

"The Tribunal will not quash the termination order on grounds of violation of natural justice where such appointment is secured by dishonest means or where such appointment was never intended to be made."

"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."

justice. The ends of justice would be defeated if while eligible candidates are denied appointments, the applicants who are ineligible are restored to service.

The Apex Court in the case of Chairman & Managing Director, United Commercial Bank & others Vs. P.C.Kakkar, 2003 (1) SC SLJ 249 while considering the case as to whether giving lesser punishment to a co-delinquent cannot be a ground for interference for punishment. It held –

"13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in M.L.Keshwani's case. As was observed by this Court in Balbir Chand Vs. Food Corporation of India Ltd.& others (1997 (3) SCC 371), even if a co-delinquent is given lesser punishment it cannot be a ground for interference. Even such a plea was not available to be given credence as the allegations were contextually different."

Hence this ground also fails.

13. In view of what has been discussed above, there is no merit in the OA and the same is dismissed without any order as to costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

Kuldip Singh
(Kuldip Singh)
Member (J)