

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.311 of 1999

and

Original Application No.310 of 1999

_____ this the 19th day of April, 2001

Hon'ble Mr. Kuldip Singh, Member (J)

Hon'ble Mrs. Shanta Shastray, Member (A)

OA 311/99

Arvind Kumar Tiwari, working as
Sub-Khalasi, under Dy. Chief Electrical Engineer
(Construction)

Western Railway,
Churchgate But posted
at Mumbai Central and residing at
Ganpat Patil Chawal, Room No.1, Shree Krishna Nagar,
Patri Pool, Kalyan.Applicant.

OA 310/99

Ajay Kumar Tiwari working as Sub-Khalasi under
Dy. Chief Electrical Engineer (Construction)
Western Railway, Churchgate but posted at
Bombay Central and residing at Ganpat Patil Chawl,
Room No.1, Shree Krishna Nagar, Kachora Road, Patri Pool,
Kalyan.Applicant

By Advocate: Shri G.K. Masand.

Versus

1. Union of India through The General Manager,
Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (Electrical),
Mumbai Central, Mumbai.
3. Senior Divisional Personnel Officer,
Mumbai Central, Mumbai.Respondents

By Advocate: Shri Suresh Kumar.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

By this common order we will decide the two OAs since
the facts in both the cases are common, strangely enough
both the applicants are brothers.

2. Both the applicants were appointed as Substitute Khalasi
by the respondents on the same date. Both of them further allege

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that while they were working one Shri S.M. Salim identifying himself as Vigilance Officer called the applicants to his office and started questioning them regarding the manner in which they got appointment.

3. They further allege that the said Vigilance Officer forced them to make the statement that they had obtained employment by paying bribe to one Shri Mohandas Gupta, So they submit that they gave the statement to the Vigilance Officer as dictated by him as they were threatened of grave consequences. A similar show cause notice was issued to certain other employees who were similarly appointed during the same period when the applicants were appointed. and it is learnt by them that the appointment of some of the employees, namely, Shri R.P. Yadav and Others who were appointed during the same period when the applicants were appointed was sought to be terminated on the ground that they had secured the employment on the basis of forged and fake documents so similarly the applicants also apprehend that their appointment will also be terminated. Those employees had also filed OA Nos.147/96, 176/96, 181/96 and other connected cases before this very Tribunal and they were granted the reliefs and respondents were restrained from terminating the services of the petitioners in the aforesaid OAs giving liberty to the department to take departmental proceedings in terms of para 2511 of the Indian Railway Establishment Manual.

4. The applicants also apprehending similar action filed OA Nos. 236 and 237 of 1996 but the same were disposed of as the same were premature. However, liberty was granted to the applicants to approach this Tribunal after passing of

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the final orders. It appears that no action was taken till fresh 2.9.97 when a show cause notice was issued and again it was alleged that applicants had secured job of Substitute Khalasi on the basis of a forged letter as such the appointments offered to them were required to be treated as cancelled and their services were terminated. Show cause notice was duly replied and it was also pleaded that since the applicants had worked for more than 120 days so they had attained the status of Temporary Railway servants and as such they are being denied the rights and privileges available to Temporary Railway Servants.

5. In their reply the applicants have also emphasised that since they had attained the temporary status so they should be conferred with the same and they further emphasised that their services could not be terminated in the manner in which the respondents have resorted to. The applicants further state that a show cause notice and termination order was bad in law and if at all the respondents were to terminate their services, they should have done so in accordance with para 2511 of the IREM.

6. Notice of these cases were issued but no counter-affidavit has been filed by the respondents. Thereafter the matters were admitted and were placed in the sine die list. Again on an application filed by the applicants the matters were taken out of sine die list. After notice to the respondents still they did not file any counter-affidavit so we have proceeded to hear the arguments on merits of the case.

7. We have heard Shri G.K. Masand, counsel for the applicants and Shri Suresh Kumar, Counsel for the respondents.

8. Respondents were unable to give any explanation as to why the counter-affidavits have not been filed except to state that

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that various persons are involved and enquiries were conducted so respondents could not file the counter-affidavits.

9. We have heard the learned counsel for the parties and have gone through the records of the cases.

10. Shri G.K. Masand, counsel appearing for the applicants submitted that since the applicants had continuously worked for more than 120 days so they are deemed to have attained the temporary status so their services could not have been terminated by virtue of paragraph 2511 of IREM and they are also entitled to the privileges available which are available to Temporary Railay Servants and as such their ^{regular} services could not be dispensed with without holding an enquiry.

11. The counsel for the applicants further submitted that the applicants are also entitled to a proper hearing in accordance with the principles of natural justice and in support of his case he has also referred to a judgment reported in AISIJ VolIII page 110 - Prithwi Nath Yadav And Others Vs. State of Bihar and Others (CWJC No 2962 of 1989) decided by the Patna High Court. In that case the applicant was appointed irregularly as no prior approval was taken from the competent authority as appointing authority ^{who} was due to retire did not take approval and also committed certain irregularities while appointing the applicants therein. The appointment was sought to be cancelled and relying upon some judgments, the court set aside the order of termination and directed the Secretary (Health), Government of Bihar to give an opportunity of hearing to the petitioners and thereafter give a finding as to whether the applicants were validly appointed or not.

12. The counsel for the applicant has also relied upon a judgment of the Hon'ble Supreme Court reported in 1990 SCC (L&S)

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page 600 - Shridhar Vs. Nagar Palika, Jaunpur and Others wherein it was held by the Hon'ble Supreme Court that an order setting aside appointment without giving any notice or opportunity of hearing to the appointee is void. Besides this, the applicants in their case have also relied upon the judgments given by this very Bench in OA Nos. 147/96, 181/96 and other connected cases where also the services of the applicants were terminated on the basis of the forged and fake documents. The OAs were allowed. Opposing these contentions, the counsel for the respondents Shri Suresh Kumar submitted that in those cases the applicants had earlier come to the Tribunal seeking to forestall the order of termination but the said OAs were dismissed. However, the services of the applicants were terminated after a proper notice was given and the applicants filed their reply and whatever pleas were open to the applicants were taken by the applicants and thereafter the final order of cancellation of the appointment of the applicants were passed.

13. The counsel for the respondents further submitted that when the applicants had not been regularly appointed there is no question of giving protection to the applicants under Article 311 of the Constitution as such they are not entitled to any such protection, so the OAs should be dismissed.

14. We have gone through the record.

15. As far as the judgments cited by the counsel for the applicants are concerned particularly in the case of Prithwi Nath (Supra) the Hon'ble Patna High Court had directed the Secretary (Health), Government of Bihar or the person nominated by him ~~should~~ should give an opportunity of hearing to the petitioners and thereafter to give a finding whether the applicant was validly appointed or not. But the court

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did not direct the respondents-department to conduct an enquiry under the CCS Rules or similar rules applicable to the Temporary Servants in State of Bihar. Similarly in the case of Shridhar (Supra) the Hon'ble Supreme Court had held that it is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector; that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. None of the judgments stated that a regular departmental enquiry should be held in case of irregular appointment.

16. As regards the earlier OAs decided by this very Bench in case Nos. OA 147/96 and other connected cases are concerned, we have called for the record and we find that in those cases the applicants were conferred with temporary status vide order dated 1.12.1995 whereas there is no such specific order conferring temporary status on the applicants in the present OAs so the cases of the applicants are not at all ^{at} par with those cases (OA 147/96 and other connected cases).

17. As far ^{as} conferring of temporary status is concerned, it is not to be granted automatically. A specific order has to be passed for conferring a temporary status upon a casual labourer. If it had not been done so, then the scheme of conferring temporary status would have used the word that the applicant who had worked for a particular number of days would be deemed to have attained temporary status. Since there is no deeming provision for attaining temporary status and the same has to be conferred with a specific speaking executive order so unless that order is passed, an employee cannot be said to be

conferred with a temporary status and since in the present OAs none of the applicants have been conferred with temporary status on the basis of so/non passing of the specific order the privileges available to present applicants them under IREM 2511 are not available to them at all at this stage.

18. As far as violation of principles of natural justice is concerned, it is the case of the applicants themselves that a show cause notice was issued to them to which they have given a detailed reply and since the respondents after considering their reply had come to the conclusion that the applicants were appointed on the basis of certain forged documents as such their appointments were irregular, so we are of the considered opinion that there is no bar to withdraw/cancel such an appointment. The withdrawal/cancellation of the appointment does not amount to termination of appointment with any stigma, so even on that score also the applicants cannot invoke the privileges available under irregularly appointed IREM (Para 2511), rather the casual workers are not entitled to any type of protection. The letter of appointment can be withdrawn or cancelled if the department comes to the conclusion that there were some irregularities or forgery committed by some one while seeking appointment.

19. In view of the above, we find that the OAs are without any merit and the same are dismissed. No costs.

Let a copy of this order be placed in OA 311 and 310 of 1992.

Shanta

(MRS. SHANTA SHAstry)
MEMBER (A)

Kuldip

(KULDIP SINGH)
MEMBER (J)

Rakesh