

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 953/99

Date of Decision: <sup>22</sup>10.2003

S. Murugan

Applicant

Versus

Union of India & Ors.

Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SHRI S. BISWAS  
HON'BLE SHRI MUZAFFAR HUSAIN

MEMBER (A)  
MEMBER (J)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. ✓

  
(S. BISWAS)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 953/1999

THIS THE 22 TH DAY OF OCTOBER, 2003

CORAM: HON'BLE SHRI S. BISWAS. .. MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN. .. MEMBER (J)

S. Murugan,  
working lastly as Pointman 'B'  
under Chief Yard Master,  
CST, Mumbai. .. Applicant

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India,  
through the General manager,  
Central Railway,  
C.S.T., Mumbai 400 001.
2. Divisional Railway Manager,  
(Operating), Central Railway,  
C.S.T., Mumbai 400 001.
3. Divisional Operating Manager  
(Goods), Central Railway,  
CST Mumbai 400 001.
4. Senior Station Manager,  
Central Railway, CST,  
Mumbai-400 001. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R  
Hon'ble Shri S. Biswas. Member (A)

By this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has sought for quashment of the impugned charge sheet dated 21.8.98 the punishment order dated 26.4.1999, the Appellate and Revision Authority order dated 16.7.1999 and 16.8.1999. He has further sought reinstatement with consequential benefits.

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2. The applicant's case is that he was appointed as Assistant Point Man with effect from 12.5.1987 and continued to work as such. Apart from being regularised, he also gained number of lift in the department in terms of scale of pay. He was also absorbed in the post. While working as such he received a memo dated 21.8.1998 in which it is interalia alleged that the appointment letter no. bb/P/640/GT/4 dated 12.9.87 was personally submitted by the applicant, which was not official. The said charge sheet was based on a statement recorded sometime in 1988 in an inquiry conducted in another case. A formal inquiry was conducted against him. One Shri G.R. Patil was cited as prosecution witness and documents were listed for production. Neither Shri patil was present nor any witness was examined for the purpose or any document was supplied. These two allegations were raised during the inquiry, in the representation to the Disciplinary Authority, Appellate Authority and Revisional Authority, but the respondents failed to give weight to his contention and punishment was awarded by the Disciplinary Authority on the basis of the inquiry report, which has been assailed in this OA. The learned counsel for the applicant has submitted a catina of judgments in support of the applicant, who had been denied of the benefit of the principles of natural justice in as much as neither the witness Shri Patil was produced for the prosecution nor for the defence.

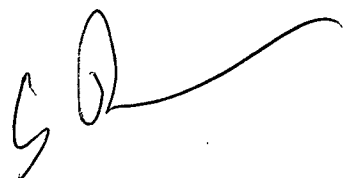
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3. The learned counsel for the applicant has brought on record a judgment reported in AIR 1961 SCC 1070V 48 C 180 in support of the case of the applicant Held Reasonable opportunity for showing cause - Charge sheet against Government servant on the basis of statements made by him in enquiry held against other Government servants Statements not amounting to clear admission of bribe.

4. Learned counsel for the applicant Shri Ramaswamy placed before us two other judgments in OA 963/99 in the case of S. Balasubramaniam Vs. Union of India & Others decided on 20th June and the order in OA No. 995 to 998/98 involving four applicants who were removed from service. Held that the impugned order of removal not valid. In contending that on the same subject there had been two opposing orders from two different benches. Mr. Ramamurthy pleaded that the matter requires to be referred to a large bench, so that the dispute be settled. Further, it was brought to our notice that in the order dated 02.02.2001 the Hon'ble Supreme Court held in State of U.P. Vs. Raj Pal Singh case the delinquents cannot be awarded different punishment when the charges are same and identical in relation to one and the same incident.

5. We would like to deal with this submission first. By this judgment dated 07.3.2002 in a number of

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OAs the removal orders of the applicants who secured job without any formal official order of appointment, but a forged ones, were quashed. Similar submissions were made in OA 958/99 where the punishment was upheld and the judgment in this case was delivered by Hon'ble Mr. V.K. Majotra. In both these cases appeal is statutory pending before Hon'ble High Court.

6. Disciplinary Authority had raised the question as to whether innocence of the applicant is required to be proved by him or the Presenting Officer. As far as we have gone through the order there is an observation in the order dated 20.4.99, which runs as " I do not find your representation to be satisfactory since you have not brought out any point to prove your innocence. On the face of it, this is very cryptic observation. The charge was held finally proved as he failed to show that he held a genuine engagement order nor he could produce any list of his bonafide as an appointee. There the onus shifted on the applicant - raising the question of his innocence. There was no denial of the fact that he did not receive the engagement order from the authorities. We are of the view that for having received the job he ought to have possessed the document of Casual Labour Card, which had been cited in the call letter etc.

7. Having gone into the merits of both side of

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case we find that the factum background of employees involved in the order dated 07.3.2002 and the order dated 20th June, 2003 are not comparable. Since these orders are distinguishable we do not find that any reference to a larger bench is called for. The question could have arisen by the bench which was about to give a dissenting order. We have gone through the order dated 07.3.2002 pronounced by Hon'ble Shri Gopal Singh, Member (A) in the case of V. Balasubramaniam. The entire case was dependant on the recorded statement of the applicant. But in the present case more emphasis has been given by the appointment letter, a copy of which neither the applicant had nor the department issued. We find that there is enough justification to hold that no cause of action was made out in this case. Though the learned counsel for the applicant contended that the statement recorded at the time of inquiry would not amount to clear admission of bribe and removal from service is not justified, the learned counsel for the respondents relied on the Hon'ble Supreme Courts decision dated 05.11.1996 in the case of Orissa Mining Corporation & Anr. Vs. Ananda Chandra Prusty in Civil Appeal No. 14163 of 1996. It was held "department had failed to prove the charges and rather it was left on the employee to disprove the charges which is not a correct procedure held in disciplinary case it is not a strict rule that burden of proof cannot be on the other side. All depends on the nature of charges & the explanation offered - Hence refused to interfere."

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8. In this case the applicant denied the charge of false appointment letter which he had not procured through a regular source. In otherwards, it was handed over to him as per his own admission by one Mr. Gadgil to whom he paid Rs.2500/-. Subsequently during inquiry this recorded statement has been denied on the ground that he had given this statement under threat of Shri Patil, who was not called for interrogation as prosecution witness. Having considered the facts and circumstances of the case the inquiry officer had rightly given his findings in this case, as the engagement order was not issued by the Railway Authority. It naturally followed that he had secured the job without any bonafide offer letter. He had none. The circumstances changed for him to establish his bonafide as an appointee which he failed.

9. The first objection which has been taken is that neither presenting authority and inquiry officer nor the disciplinary authority did examine any witness at the time of production of listed documents, which has been however acknowledged by charged officer as per the records produced before us. As regards the failure of the department to produce the witness Shri G.R. Patil, it has been elaborately discussed in the inquiry report that despite several steps had been taken, Shri Patil could not come to inquiry as he was not well. Therefore, the examination of him was dropped for the

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sake of completing inquiry. The department had no other alternative to cross examine. We however, not able to give much importance to this submission. Shri Patil did not turn up in the inquiry for the reasons best known to him. Further, in reply to specific question, the applicant had given the following admission during the inquiry. Against Q. No.12 he stated that did not bribe. Q. Who gave this letter to him? In the reply he said that his letter was not received by him but was handed over to him. In an earlier disciplinary case, in 1988 he had admitted stating that he obtained the letter for Rs.2500/-. He further confirmed that a letter of appointment was not at all issued by the respondent authority. The respondent authority reiterated that the appointment letter was not issued by them and the one that was produced was fake. That had come on record in the statement of 26.10.1988. He has belated now retracted that the statement was taken under threat. We also do not understand while taking such plea that it was taken under threat by Mr. Patil, why he should keep quiet all these years. Therefore, the onus shifted on the applicant to prove his innocence cannot be in doubt. This has come to light in reply to Q.No. 12, 13 and 15. Similarly, in his deposition dated 17.12.89 demanding for list of documents, he again took the plea of threat of Mr. Patil. Regarding report of presenting officer he raised several allegations of conspiracy. He also mentioned that he did not reply to question No.10, 11

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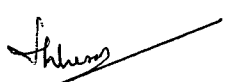


and 12. On the question of existence of casual labour card, the applicant admitted that he did not earlier work in Railways. Therefore, it can be said it was not a bonafide appointment order. In reply to question No.13 he has acknowledged the receipt of listed documents. He has also answered to question No.4 that he has nominated Shri D.M. Sathekar, retd. CRI BLS to assist him to defence his case but he was not present that dat. Further, he was asked before concluding the inquiry if he had reasonable facility to defend his case, to which he said - yes. In his representation to Disciplinary Authority, he did not retract any of this submissions. In the facts and circumstances of the case as discussed by inquiry officer, disciplinary authority, appellate authority and revision authority the applicant provently procured his job as APM by submitting fake document from the open market as per his own admission and this was not denied by him. No such order was produced and issued by the respondents from the file.

10. In this connection, though he has alleged that certain others who were involved in this incident, were not prosecuted, but the respondent authorities have affirmed that these people were removed under a separate disciplinary action. We therefore, find that no invalidating irregularity had been committed to come to the relevant and necessary finding that the applicant procured his job by fake document and he had never got any official offer, which was not issued at all.

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11. In view of the foregoing, we do not propose to interfere with the order. In the result the OA fails and is dismissed without any order as to costs.

  
(M. HUSAIN)  
MEMBER (J)

  
(S. BISWAS)  
MEMBER (A)

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