

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Dated this Friday the 27th day of August 2004

Coram: Hon'ble Shri A.K.Agarwal - Vice Chairman
Hon'ble Shri S.G.Deshmukh - Member (J)

O.A.776 of 1999

Biharilal Bhagwati Prasad Yadav,
R/o Ajni Nagpur,
Ex-Assistant Driver,
under D.R.M, Central Railway,
Nagpur.
(By Advocate Shri M.A.Rashid)

- Applicant

Versus

1. Union of India
through General Manager,
Central Railway, Mumbai.
2. The Divisional Electrical Engineer,
(Traction Operations), Central Railway,
Nagpur.
(By Advocate Miss Tanna of behalf of Shri]
R.S.Sunderam)

- Respondents

O R D E R

(Per: A.K.Agarwal, Vice Chairman)

This OA has been filed by the applicant for quashing and
setting aside order of his removal from service dated 31.7.1998.

2. The facts of the case as given in the OA by the applicant
are as follows. The applicant was appointed as SKR, ^{Khalgi} vide order
dated 24.11.1982 by the Divisional Railway Manager, Nagpur in the
pay scale of Rs.196-232/- . The applicant had applied for
appointment on compassionate grounds on the death of his father
who was a Fitter in the Carriage and Wagon Workshop Ajni and died

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on 23.7.1978. The elder brother of the applicant was working as a Casual Labour w.e.f. 29.5.1975 and was holding Service Card No.36740. The applicant was confirmed as SKR vide order dated 21.4.1986. Thereafter he was promoted as Assistant Driver in a higher grade after successfully completing the training. After serving in the Railways for nearly 15 years with unblemished record, the applicant received charge memorandum dated 28.2.1995 alleging that he had obtained appointment on compassionate grounds in the Railways by suppressing the information that his elder brother had already got appointment on compassionate grounds. Shri V.K.Iyyer, Senior Loco Inspector was appointed as the Enquiry Officer vide letter dated 28.2.1995. The Enquiry Officer submitted his report on 18.7.1995 mentioning therein that the charge levelled against the applicant could not be proved for want of required records. After almost two years the applicant received another charge sheet on the ground that the earlier enquiry proceedings had certain irregularities and it has been decided to have the enquiry done de novo. The second charge memorandum was issued to the applicant on 12.9.1997. On the same date another letter communicated to the applicant that earlier charge memorandum is being withdrawn not as a final disposal of the disciplinary case but to rectify the procedural lapses

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noticed in the charge memorandum. The DRM's office vide letter dated 18.11.1997 withdrew its earlier letter dated 12.9.1997 which was written for appointing an Enquiry Officer. The applicant states that during the period 12.9.1997 and 24.11.1997 the Enquiry Officer i.e. Ritu Ganguly had commenced the enquiry proceedings and the applicant also attended the enquiry on 23.10.1997. The new Enquiry Officer submitted his report to the Disciplinary Authority on 31.3.1998.

3. The applicant has mentioned that he had filed OA 60/98 before the Tribunal challenging certain irregularities in the charge sheet. During the pendency of OA 60/96, the respondents brought to the notice of the Tribunal that the Disciplinary Authority passed a final order on 31.7.1998 imposing the penalty of removal from service on the applicant. On this development the Tribunal observed that the applicant should first exhaust the departmental remedy of appeal available to him. The Tribunal disposed of OA 60/98 vide order dated 4.8.1998 with liberty to the applicant to approach the Tribunal for appropriate relief in accordance with law if any adverse order was passed by the Appellate Authority. The applicant filed an appeal before the Appellate Authority on 4.9.1998 which was dismissed vide order dated 12.7.1999.

4. The learned counsel for the applicant in his averments initially mentioned that the applicant was appointed on a Group 'D' post on 24.11.2002 and was subsequently promoted as Assistant Driver which is a Group 'C' post. A charge sheet was issued to the applicant on 28.2.1995 i.e. after almost 13 years of his appointment stating therein that he obtained appointment in the Railways on compassionate grounds concealing the fact that his elder brother was given appointment earlier on compassionate grounds. As per rules only one member of the family of the deceased is to be provided appointment on compassionate grounds. The applicant had thus concealed material information from the Railway authorities and obtained appointment on compassionate grounds which is not permissible under the rules. The Enquiry Officer in his report dated 18.7.1995 held the charges as not proved against the delinquent for want of required records. It was mentioned in the report that there is no mention in the Service Record that the applicant was given appointment on compassionate grounds. The learned counsel mentioned that the appointment order dated 24.11.1982 also no where mentions that applicant was given appointment on compassionate grounds.

5. The learned counsel for the applicant continuing his submissions mentioned that after two years of the submission of report by the Enquiry Officer, that charges levelled against the

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applicant are not substantiated for want of records, the DRM, Nagpur vide letter dated 12.9.1997 withdrew the charge sheet dated 28.2.1995 to rectify the procedural lapses noticed in the charge memorandum. The learned counsel mentioned that action on the enquiry report has to be taken by the disciplinary authority as per the provisions contained in Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 which stipulates that "The Disciplinary Authority for the reasons to be recorded in writing may remit the case to the inquiring authority for further enquiry". There is no provision for issuing another charge sheet by withdrawing the earlier charge sheet and starting the enquiry de novo for the same misconduct. On this issue the applicant has relied on the decision of the Apex Court in the case of K.R.Deb Vs. The Collector of Central Excise, Shillong, 1971-I-L.L.J.SC 427 wherein it has been held that-

".....If in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the disciplinary authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiry Officer or Officers does not appeal to the Disciplinary Authority."

6. The learned counsel for the applicant in this regard drew our attention towards circular dated 1.12.1993 of the Railway Board containing guidelines regarding issuing of a fresh charge



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memorandum after cancellation/withdrawal of original charge memorandum. It has been mentioned in Para 2 of this circular that once the proceedings under Rule 9 or Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge Memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case."

7. The learned counsel for the applicant mentioned that the appointment of Enquiry Officer was initially made vide order dated 24.6.1997 along with the order for de novo enquiry. Later on another order dated 12.9.1997 was issued for appointment of the Enquiry Officer which was subsequently withdrawn vide letter dated 18.11.1997. The second charge sheet of the applicant was issued on 12.9.1997. It means that the appointment of the Enquiry Officer vide letter dated 24.6.1997 was done prior to issuance of the charge sheet. Moreover, a Vigilance Inspector was appointed as Enquiry Officer who had a bias against the applicant. The learned counsel pointed out that the appeal made by the applicant against the orders of removal has been dismissed

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by the appellate authority vide order dated 12.7.1999. This order is a very short and cryptic order and does not discuss the issues raised in the memo of appeal. The learned counsel has relied on the ruling of the Apex Court in **R.P.Bhatt Vs. Union of India and others**, AIR 1986 SC 1040 wherein it has been held that "the Discipline & Appeal Rules cast a duty on the appellate authority to consider the relevant factors set forth of the case. The word 'consider' in the rules implies due application of mind and the appellate authority is required to consider whether the procedure laid down in the rules has been complied with or not."

8. The learned counsel mentioned that issuance of a second charge sheet after a period of two years when the report on the first charge sheet based on same misconduct submitted by the Enquiry Officer, was pending for the decision of the disciplinary authority was obviously outside the ambit of rules. The Railway Board circular dated 1.12.1993 also casts duty on the disciplinary authority to mention clearly the reasons for dropping the earlier proceedings and also to state in the order that proceedings have been dropped without prejudice to further action which may be considered in the circumstances of the case. There is no application of mind by the appellate authority even on such important issues.

9. The learned counsel for the respondents mentioned that the letter dated 12.9.1997 addressed to the applicant by DEE (TRO) Nagpur clearly mentions that the earlier charge sheet issued is being withdrawn without prejudice to the right of the respondent to issue a fresh charge sheet. He said that the Railway Board's circular dated 1.12.1993 contains guidelines for the disciplinary authority to take action while issuing the second charge sheet. It mentions that the disciplinary authority should clearly state that the earlier proceedings have been dropped without prejudice to further action which may be considered against the delinquent. Regarding the appointment of the Enquiry Officer, the learned counsel for the respondents mentioned that Ritu Ganguly was appointed as the Enquiry Officer vide letter dated 24.6.1977. Another letter dated 12.9.1997 also appoints Ritu Ganguly as the Enquiry Officer. As two orders were passed, one ought to have been cancelled and this does not cause any prejudice to the applicant. He further stated that the appointment of the Enquiry Officer before issuing charge sheet to the delinquent does not vitiate the proceedings. The enquiry was initiated by the Enquiry Officer only after getting the reply of the delinquent and as has been mentioned by the applicant himself, he had his first hearing with the Enquiry Officer on 13.10.1997 while charge sheet was issued on 12.9.1997. Moreover the applicant has participated in the enquiry proceedings

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conducted by the Enquiry Officer Ritu Ganguly and has raised no objection on this count at any stage of the enquiry proceedings.

10. The learned counsel for the respondents in reply to the point that the order passed by the Appellate Authority is a 'non speaking order', mentioned that if one sees, the appeal submitted by the applicant, is a sort of a mercy appeal and pleads for sympathetic consideration. Under such circumstances the appellate authority had passed the order confirming the order of the disciplinary authority. No additional point was required to be discussed, as nothing was raised in the appeal memo. Nevertheless, the order of the Appellate Authority specifically mentions that the applicant had obtained employment by fraud and fraud is a fraud which cannot be tolerated. On the issue relating to initiation of second enquiry on the same misconduct the learned counsel for the respondents mentioned that the facts of this case are different then what were in the case of K.R.Deb (supra). In that case the Enquiry Officer had clearly reported that the charges do not stand proved. However in this case the first Enquiry Officer had also reported that the charges could not be proved for want of adequate record. Later on when the record became available, the enquiry could be conducted in a proper manner and charges were established. The second enquiry has not caused prejudice to the applicant since it is based on

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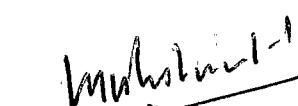
documentary evidence for which there is no rebuttal. The ruling of the Delhi High Court in the case is Chander Singh (supra) is also distinguishable.

12. We have heard both the counsel and have gone through the material placed on record. One of the points raised by the learned counsel for the applicant was that the order dated 24.11.1982 appointing the applicant does not mention that the appointment was made on compassionate grounds. This argument is not sustainable for the simple reason that the applicant himself in the OA has mentioned that he had applied for appointment on compassionate grounds. This aspect has not been disputed during the course of the enquiry also. Further the documentary evidence produced in the enquiry also mentions that the appointment was made on compassionate grounds. The other point raised by the applicant in the OA is that his elder brother was working in the Railways as a casual worker prior to the death of his father and therefore his appointment could not be said to have been made on compassionate grounds. The Enquiry Officer in his report mentioned that as per the documentary evidence produced before him the name of the applicant is registered at serial no.541 (a) for appointment to a Class IV post on compassionate grounds. In the same Register, at serial no.216, the name of the elder brother of the applicant is also there, who had applied for

appointment on compassionate grounds. The father of the applicant had expired on 23.7.1978 and the elder brother of the applicant Shri Ramlal Bhagwati Prasad Yadav was appointed as Electrical Khalasi on 13.8.1979. Further in the Application Form the applicant concealed the information about the appointment given to his elder brother. In that particular column, he did not mention anything. Thus it has been held beyond reasonable doubt that the applicant had full knowledge that the appointment of the elder brother of the applicant was made on compassionate grounds. He was also well aware that as per policy of the respondents two persons from one family cannot be given appointment on compassionate grounds. The appointment obtained by the applicant by concealing the information is voidable ab initio. The Apex Court in the case of **R.Vishwanatha Pillai Vs. State of Kerela and others**, 2004 (1) SC SLJ 298 has held that where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law and protection of Article 311 of the Constitution is not available to such a person.

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13. Keeping in view the facts and circumstances and the ratio laid down by the Apex court in R.Vishwanatha Pillai (supra), we hold that the applicant has no case and this OA deserves to be dismissed. The OA is dismissed accordingly. No order as to costs.


(S.G. Deshmukh)

Member(J)


(A.K. Agarwal)
Vice Chairman

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