

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.963/99

Dated this the 20th day of June 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

S.Balasubramniam,
R/at Room No.205, Azad Nagar,
Near RPF Quarters,
Matunga, Mumbai.

...Applicant

By Advocate Shri S.Ramamurthy

VS.

1. Union of India
through the General Manager,
Central Railway, CST,
Mumbai.

2. Divisional Railway Manager,
(Operating), Central Railway,
CST, Mumbai.

3. Divisional Operating Manager,
(Goods), Central Railway,
CST, Mumbai.

4. Senior Station Manager,
Central Railway, CST,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri V.K.Majotra, Member (A)}

Applicant has challenged penalty of removal from service in disciplinary proceedings on the charge that he had secured appointment as Substitute Assistant Pointsman in February, 1987 by producing fake/bogus appointment letter.

2. The learned counsel of the applicant contended that respondents have not adduced any evidence oral or written to prove the charge against the applicant. The only supporting document relied upon by the respondents is applicant's alleged statement made in an enquiry made on 26.10.1988 in the D.E. case of another person Shri O.P.Jharia, Ex-APO. The learned counsel of the applicant stated that this is a case of no evidence. Learned counsel stated that in a statement dated 25.3.1998 applicant had stated that statement dated 26.10.1988 was recorded by Shri Patil and signed by applicant and others but Shri Patil obtained his signature under threat. Learned counsel stated that a statement made under threat cannot be deemed to be admission of the applicant. In this connection, we have to observe that while statement dated 26.10.1988 was made long ago by the applicant himself and if the statement had been obtained from him under threat, normally, the applicant should have reported this to the higher authorities or to Police and controverted the confessional statement immediately. Since he did not do so, it has to be considered to be an after thought.

3. The enquiry officer in the enquiry report had given the following finding :-

"As stated earlier it is true that Shri G.R.Patil was only prosecution witness in this case cited by the disciplinary authority. Shri G.R.Patil who did not attend the enquiry due to his personal reasons even after issuing notices for several times. As such the enquiry is concluded on the basis of documentary evidence available and cited before the enquiry and after obtaining clarification from CE. Even though there is no prosecution witness to support these documents, the existence of these documents cannot be ignored and moreover CE/ARE did not submit any of the documents or witness to refute the charge and establish his innocence. As such documentary evidence cited in Annexure -III and clarification given by CE gives ample evidence to support the charges framed against CE Shri S.Balasubramaniam. As such charges framed against CE Shri S.Balasubramanian, vide SF-5 No.Sr.S.M./CSTM/34/97 are proved against him."

4. As we have held above that applicant had stated at a belated stage that he had made statement of admission on 26.10.1988 under threat, it has to be held that the applicant has made a clear and unambiguous admission of his guilt. In the case of Jagdish Prasad Saxena vs. State of Madhya Pradesh, AIR 1961 SC 1070, it was held that only in case of unclear or ambiguous admission of guilt an enquiry has to be held. In this case, when the statement dated 26.10.1988 is clear and unambiguous, it does not require proving by a witness. As a matter of fact, the ratio in the case of 1998 SCC (L&S) 865 - Ministry of Finance & Anr. vs. S.B.Ramesh is also applicable. It has been observed in that case that any statement recorded behind the back of a person can be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross-examination, to prove his or her veracity. In the instant case, statement dated 26.10.1988 has been made by the applicant himself, the question of his examination or cross-examination would not arise particularly because the statement made by him is clear and unequivocal and his contention that the same had been made under threat has not been relied upon as the applicant had not reported about any threat immediately to any authorities.

Having regard to the facts and circumstances of the present case, as also the discussion made above, removal from service of the applicant who had obtained appointment fraudulently on the basis of fake/bogus documents is quite in order as no right is created in favour of such an appointee. As such, finding no infirmity in the impugned punishment, OA. is dismissed being devoid of merit. No costs.

S. Raju
(SHANKER RAJU)

MEMBER (J)

V.K. Majotra
(V.K. MAJOTRA)

MEMBER (A)

mrj.