

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.121/2000

Dated this Monday the 28th Day of May, 2001.

Shri Rajaram Sitaram Khurasane Applicant

(Applicant by None)

Versus

UOI & Ors. Respondents

(Respondents by Shri R.R.Shetty, Adv.)

CORAM

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to NO other Benches of the Tribunal?

(3) Library.

YES.

S. Raju
(Shanker Raju)
Member (J)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.121/2000
Date of Decision: 29.5.2001

CORAM: HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Rajaram Sitaram Khurasane
Monthly Rated Casual Labour
Working under
PWI (R), BAU, Raver
Central Railway,
Now being transferred to
Sholapur Division
Central Railway
Presently Residing at
& P.O. Balapur,
Tal: Yeola, Dist: Nashik Applicant
(None present for the Applicant)

vs.

1. Union of India, through
The Divisional Manager
Bhusawal Division,
Central Railway,
Bhusawal, Dist: Jalgaon.
2. Divisional Railway Manager
Sholapur Division,
Central Railway,
Sholapur,
3. Section Engineer - Tracks
(Relaying)
Bhusawal Division
Central Railway,
Bhusawal, Dist: Jalgaon Respondents
(Respondents by Shri R.R.Shetty, Advocate)

O R D E R (ORAL)

[Per: Shanker Raju, Member (J)]:

Present none for the Applicant despite the second call.
Shri R.R. Shetty is present for the Respondents. I proceed to dispose of the present case in view of the provisions of Rule 15 of the CAT Procedural Rules 1987. The Applicant has filed M.P.No.32/01 in this O.A. wherein he has prayed for bringing on record the Affidavit filed by his fellow gang mates stating

that the applicant was on duty at the material time, which is allowed and taken on record.

2. The Applicant in this O.A. has assailed an order dated 30.5.1997 contending that the Applicant had been working as a Monthly Rated Casual Labourer since 1989 Raver, Bhusawal Division and was transferred and relieving order was issued on 30.5.1997 for joining the Division of Respondent No.2 at Solapur. It is the grievance of the Applicant that he immediately reported to the Office of Respondent No.2 but due to certain objections raised by the Respondents, Respondent No.3 were to comply with certain pre conditions to effect the transfer of the Applicant to Sholapur Division. The grievance of the Applicant that this order has not yet been complied with despite his persistent requests. The Applicant has also raised a grievance regarding payment of his wages in M.P. No.332/2000 praying that Respondents have denied the service and monetary benefits including salary to the Applicant w.e.f. June 1996 to 2001.

3. The Applicant has assailed the action of the Respondents mainly on the ground that once the transfer is effected by the Respondents it is incumbent upon them to post the transferred employee to the place of transfer and the Applicant should have been posted as per the instruction of Respondent No.1 and 3. It is also contended that the denial of posting of the applicant is illegal in these circumstances. In this background it is also stated that the action of the Respondents by denying the applicant to join his duty and salary in the absence of any disciplinary proceedings etc. contemplated or pending, the same

would be violative of service condition and rules and denial of his right for livelihood is violative of right to live under the Constitution of India. In this background the Applicant has prayed for direction to Respondents to pay monthly salary to Applicant and arrears w.e.f June 1997 upon absorption at Sholapur.

4. In their reply the Respondents have denied the contention of the Applicant and further stated that the Applicant was initially appointed as a Monthly Rated Casual Labaourer on 28.8.1984 and was allowed an M.R.C.L. status on 4.7.1986. As the applicant had remained absent in broken spells for a period of 1283 days w.e.f. 23.12.1986 to 18.7.1996 and the name of the Applicant has been struck off from the rolls on 18.8.1996. The respondents further submitted that in pursuance of 12 vacancies of MRCL at Sholapur, option were invited from MRCLs who are on the strength of Respondent No.1 at Bhusawal to opt for Sholapur Division to accord them the benefit of such absorption. The Applicant who was not even on the strength of respondents at Bhusawal applied for the same and his case was inadvertently forwarded to the concerned Division. It is the contention of the Respondents that the case of one Rajaram Sitaram was in fact forwarded and incidentally the Aplicant was having the same initials and taking undue advantage of the fact opted to go to Solapur. Along with the reply Annexure R.2 is the order of transfer dated 9.5.1997 to Sholapur Division and R.3 along with R.4. annexed to the Reply. It is submitted by the Respondents that the Applicant is not the real Rajaram Sitaram whose name had

figured in the order dated 9.5.1997 at R.1. In this background it is contended that the two employees having the same initials were existing in the roll of the Respondents but the name of the Applicant has already been struck off from the strength with effect from 18.8.1986. No question of allowing him to either to be absorbed at Sholapur or to continue at Bhusawal does not arise. It is further stated that during the screening held in 1995 the Applicant was declared unsuitable which is reflected from Annexure R.5. In this background it is stated that the Applicant was not at all eligible for further absorption and continuance in service and not entitled for salary which he has sought in this O.A. The Respondents by referring to Casual Labourer Card No.293239 which was allotted to the Applicant, another person having the same name holding Card No.647/28 was on duty on 27.2.1997 when the option was called for by the Respondents. The Applicant cannot take undue advantage of an inadvertent error of the Respondents without being eligible for absorption and without being on the Rolls and strength of the Respondents. The Respondents Counsel has also contended that the name of the Applicant has been struck off from the Rolls on 18.8.1996 and thereafter he had not taken any steps to get his reinstatement by filing any O.A. or by taking any other appropriate remedy. It is contended that the real person "Rajaram Sitaram" whose name figured in Annexure R.1 has not opted to go to Sholapur and is still continuing at Bhusawal. This clearly indicates that the Applicant has taken undue advantage of the situation where some confusion was prevailed in the initials of persons from whom the option was taken. In this

background when the matter has been brought in the notice of Respondent NNo.3, the concerned Division has denied to absorb the applicant because of the fraud committed by him. Taking advantage of his name the applicant manipulated to substitute himself in the matter of option which pertained to another Rajaram Sitaram who was in the Rolls of the Respondents. It is lastly contended that he had been denied absorption rightly as due to oversight transfer orders to Sholapur Division were issued since the Applicant having struck off from the Rolls of the Respondents was not in possession of LPC, SR & Leave a/c ; and he could not be relieved as such. It is in this regard contended that the Affidavits filed by the fellow gang mates indicates that he had been working at Bhusawal Division as MRCL at Raver does not inspire confidence in the absence of any documentary proof tendered by the Applicant to show that he was existing on the Rolls of the Respondents. No rejoinder has been filed by the Applicant to controvert the reply of the Respondents.

5. I have, carefully perused the pleadings in the O.A. and considered the submissions of the learned Counsel for the Respondents. The claim of the Applicant for effecting his transfer and absorption at Sholapur and also to accord all monetary benefits is liable to be rejected on the ground that the Applicant has already been struck off from the rolls of the Respondents in the year 1996 after remaining absent for intermittently long time and also failed to get through the screening. The name figuring in the transfer order dated 30.5.1997 does not belong to the Applicant but rather it belongs to another Rajaram Sitaram and this fact is amply proved from the

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record produced by the Respondents as the absent particulars of the Applicant clearly indicates that he remained absent for 1283 days and vide Annexure R.1 his name has been struck off from the Rolls of the Respondents on 18.8.1996. Thereafter the applicant failed to produce any evidence or proof to indicate that he had worked thereafter as MRCL in Bhusawal Division as a Gang man or was awarded any salary etc. The applicant has also failed to show any proof regarding LPC, SR & Leave A/c. etc. to indicate that he was existing in the Rolls of the Respondents after 18.8.1996 upto 30.5.1997 when the transfer order has been issued. From the perusal of the official records and material brought on record by the Applicant in fact he had rendered service as MRCL but evidence brought on record by the respondents the evidence of his fellow gangmates in the form of affidavits would be of no avail to him. The affidavit is to the effect to establish the fact of his being worked as MRCL after his name has been struck off w.e.f 18.8.1995. From the overwhelming evidence produced by the Respondents, I am satisfied that the applicant taking undue advantage of an identical name filled up his option to get transfer orders from Bhusawal to Sholapur Division and further manipulated to stake his claim regarding his continuance from the date of his name had been struck off from the list. Even from the perusal of the affidavits filed by the Applicant of fellow gangmates go to establish that he had worked in Bhusawal Division as MRCL in the gang along with the deponent about 7 to 8 months prior to 30.3.1997 and that brings out the period to approximately near to the date when the name of the applicant was struck off from the list. It is also established that the orders

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applicant was in fact directed towards another Rajaram Sitaram and this has been done inadvertently by the Respondents by forwarding the case of applicant. It is an established law that a person cannot claim his right on an inadvertent error or wrong of the Govt.

6. Having regard to the discussion made and reasons recorded the fact that the Applicant has miserably failed to show that he had worked as MRCL with the Respondents w.e.f. after his name has been struck off from the records, we find no merit in the claim of the Applicant. As such the O.A. is rejected. No orders as to costs.

S. Raju
(Shanker Raju)
Member (J)

sj*