

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, AT MUMBAI.

Original Application No.791/2000

Original Application No.792/2000

And

Original Application No.793/2000

Dated this Wednesday, the 1st day of September, 2004.
MV

CORAM: HON'BLE SHRI ANAND KUMAR BHATT, MEMBER (A)
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Chandram Inamdar
lastly working as
Assistant Pointsman,
Kurla Car Shed,
Mumbai 400 070
and residing at Room No.59,
Shankar Kavde Chawl,
Dharavi Cross Road,
Mumbai 400 017

.... Applicant in O.A.791/2000

Shanki Anthony Koli
lastly working as Assistant
Pointsman, Kurla Car Shed
Mumbai 400 070, and
residing at C/o Anthony Kaithan Koli
House No.192/S, Dharavi Koliwada,
Near Dattamandir,
Mumbai 400 017. Applicant in O.A.No.792/2000

And

Balu Baburao Bhosale,
lastly working as Assistant
Pointsman, Kurla Car Shed
Mumbai 400 070, and
residing at Samrat Ashok Seva Mandal,
H.No.101, 'C' Ward
Mukund Nagar, Dharavi,
Mumbai 400 017. Applicant in O.A.No.793/2000

(All the three applicants by Shri Ramesh Ramamurthy, Advocate)

vs.

1. Union of India,
through the General Manager
Central Railway,
C.S.T. Mumbai 400 001.
2. The Divisional Electrical
Engineer (TRS)
Kurla Car Shed
Central Railway, Kurla
Mumbai 400 070.

3. Assistant Electrical
Engineer (TRG)
Kurla Car Shed,
Central Railway
Kurla Mumbai 400 070.

... Common respondents
in all three OAs.

(Respondents by Shri S.C.Dhawan, Advocate)

ORDER

[Per: S.G.Deshmukh, Member (J)]:

In all these three O.As. the facts and question of law involved are identical so also the respondents and the counsel for parties are common, we propose to dispose of by a common order for the sake of brevity.

2. The present O.As. i.e. O.A.No.791/2000, 792/2000 and 793/2000 have been filed for quashing and setting aside the order of removal dated 3.11.1997 passed by the disciplinary authority separately in the case of each applicants and confirmed individually by the appellate authority by order dated 21.3.2001 and directing the respondents to reinstate them with full backwages.

3. The brief facts in all the three O.As. are that the applicants in O.A.No.791/2000 and 792/2000 were appointed in Railway Service under order dated 15.6.1992 and the applicant in O.A.No.793/2000 was appointed under order dated 18.12.1990 as a Substitute Assistant Pointsman in Kurla Car Shed on Central Railway. All the three were sent for screening for permanent absorption as regular Assistant Pointsman in grade Rs.750-940 under letter dated 19.2.1994 and all of them were found fit, for absorption and accordingly they were granted absorption in regular service by post facto sanction given by the General Manager by order dated 8.10.1996. It is contended that all the applicants were issued chargesheets dated 26.8.1996 individually,

charging them that they had obtained appointment in Railway as Assistant Pointsman on forged and bogus documents by paying bribe. One Mr.R.B. Barkade AEO (HQ) was appointed as Enquiry Officer in respect of charges against all the three applicants. He had conducted separate enquiries against all the three charged officials. The witnesses in support of the charge were only Vigilance Officers in the disciplinary proceedings. It is contended that there is no concrete evidence to show that the applicant had paid bribe for obtaining the employment except their confessional statement. The Enquiry Officer submitted separate reports in all three departmental enquiries in respect of applicants in O.A.791/2000 and 792/2000 on 31.12.1997 and in respect of applicant in O.A.793/2000 on 22.1.1997 holding the charge as proved against them. It is contended that there is no other evidence to corroborate the evidence of Vigilance Officers to prove the charges the enquiry officer has arbitrarily held that the charges as proved. All the three applicants were supplied the copy of the enquiry report in the respective departmental enquiries. The applicants submitted their reply to the same. The disciplinary authority proceeded to pass the order of removal from service on all the three applicants by separate orders impugned in these O.As. All the three applicants had preferred the appeals against the removal order which during the pendency of the O.As., were dismissed by the appellate authority by separate orders dated 21.3.2001. Hence these O.As. The applicants filed M.P.No.867/00, 868/00 and 869/00 for condonation of delay in filing these O.As.

4. The respondents filed their counter affidavit in all the three OAs. It is the contention of the respondents that all the three applicants obtained the employment under respondents by

using unfair means. They never worked prior to 1992 as falsely mentioned in the letter of engagement/posting. Accordingly all the three applicants made the statement before the Vigilance Officer. It is contended that the applicants in all these OAs have not come with their clean hands. They have suppressed the material facts that they had obtained employment by foul means, misrepresentations and fraud and manipulation and that they had admitted the same categorically when the enquiry was done in 1993 on the basis of which a regular enquiry was held after service of chargesheet against them. It is contended that on the basis of forged and got up letter dated 15.6.1992 managed by the applicants in 1991-92 by bribe and fraud, and the letters/orders dated 16.6.1992 in respect of Applicant in OA 791 & 792/00 and letter/order dated 20.12.1990 in respect of Applicant in OA793/00 were issued by Sr. DEE (Trs) Kurla. Those letters cannot be said to be issued according to the rules or to be binding contract on the respondents. It is contended that the action of all three applicants in obtaining the letters by means of fraud, misrepresentation and foul means clearly shows that they were trying to cheat the administration in obtaining service with the Railway and there is no contract by the letters or the office orders. The letters were not issued by the Divisional Personnel Office, Bombay V.T. It is contended that the preliminary enquiry by the Vigilance Department in the year 1993 (in O.A.791 & 792/00) the applicants in O.A. No. 791/00and 792/00 and in the year 1994 in respect of applicant in O.A.No.793/00 had admitted in the recorded statement that they had obtained employment with the railways by means of misrepresentations, fraud and foul means. On the basis of those statements all the three applicants

were issued the charge Memos dated 26.8.1996 individually. The Enquiry Officer in all the three independent enquires was appointed after that the applicants submitted their representations against the same. They were afforded full and free opportunity to defend themselves. They appeared before the Enquiry proceedings along with Assisting Railway Employees (AREs) and the enquiries were conducted under Rule 9 of the Railway Servants (Disciplinary & Appeals) Rules against them. It is contended that during enquiry applicants could not prove that the statements dated 13.12.1993, in case of applicants in OA791 & 792/00 and 21.2.1994 in case of applicant in OA793/00 were either false or taken under coercion or did not contain correct facts by cross examination or otherwise or by producing any evidence to the contrary. It is contended that the enquiry proved that the applicants in O.A.791/00 and 792/00 had not worked with the Railways at any time prior to 16.6.1992 whereas the applicant in O.A.793/00 prior to 20.12.1990. It is also contended that all three applicants had not undergone training as Assistant Points man before engaging them in Kurla Car Shed and even undergone the medical examination for his fitness to serve. It is contended that the statements of applicants in OA791/00 and 792/00 were written by one K.M.Inasu, Asstt. Yard Master and the statement of applicant in OA 793/00 was written by himself in Marathi language.

5. It is contended that the findings of the enquiry officer in all three enquiries are based on evidence. It is further contended that in all three enquiries there were unconditional acceptance by the applicants. It is contended that the applicants have neither made allegation of not following the principles of natural justice or any allegation of bias etc. or alleged any malafide against the authority. Respondents filed reply to the MPs. for condonation of delay opposing the same.

6. The applicants filed their rejoinder in all the three applications and reiterated the contentions raised in the respective O.As. along with MPs. for condonation of delay.

7. Heard Shri Ramesh Ramamurthy, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents

8. Shri Ramesh Ramamurthy while arguing on behalf of the three applicants submitted that no evidence has been brought on record to prove the charges against the applicants in all the three O.A.s. The learned counsel submitted that there is no evidence to show that the letters in question were forged and bogus documents and the applicants had paid bribe. The learned counsel submitted that the entire Departmental Enquiry rest on the evidence of Vigilance Officers. There is no evidence of APO(T) P.Balan who had signed the appointment letters. The learned counsel submitted that the applicants had not accepted the alleged confessional statements and had stated that it was not of their free will. The enquiry officer has made incorrect assumption of facts by accepting the so-called confession of the applicants without the applicants confirming the same. The learned counsel submitted that there is no case for holding the charges even on the basis of preponderance of probabilities. The learned counsel further submitted that the disciplinary authority did not give personal hearing and the order of the appellate authority is a non speaking order.

9. Shri S.C.Dhawan, learned counsel on the other hand, argued on behalf of the respondents that the function of the Tribunal is only to review the process of enquiry proceedings and to see that principles of natural justice have been followed and

not to sit in appeal against the orders of competent authority and find out its correctness. The learned counsel submitted that the applicants in all the three OAs. had neither made any allegations of breach of principles of natural justice or any allegations of bias, against the enquiry officer or disciplinary authority or alleged any malafides against the authorities. The learned counsel submitted that there is some legal evidence on which the findings can be based, then adequacy and even reliability of that evidence is not a matter of canvassing before the Tribunal. The learned counsel in that respect relied on the judgement in the case of *The High Court of Judicature at Bombay through its Registrar vs. Shasikant S. Patil and Anr.* 2000 (1) ATJ 171. The learned counsel further submitted that there is evidence of confession made by the applicants in all the three OAs. It is brought on record by the Vigilance Officers in whose presence the respective confessional statements were recorded. The learned counsel further submitted that the applicants in their statements recorded on 13.12.1993 (in OAs. 791/00 & 792/00) and on 21.2.1994 (in O.A.793/00) have admitted that they had obtained employment by unfair means. The learned counsel further submitted that the evidence of Vigilance Officers and the confessional statement of the applicants show that the applicants by using unfair means had obtained the employment. The evidence shows that they had never worked prior to 1992 (in case of applicants in OAs 791/00 and 792/00) and 1990 (in case of applicant in OA.793/00). The learned counsel submitted that it

is not necessary for the disciplinary authority to appraise the evidence to arrive at the same findings when the disciplinary authority accepts the reasons given by the Enquiry Officer. The learned counsel further submitted that where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law and under the circumstances Article 311 of the constitution is not attracted. In support of this contention he relied on the judgement in the case of *R. Vishwanatha Pillai vs. State of Kerala and Ors 2004 (1) SCSLJ 298*. The learned counsel also relied on the judgement in the case of *UOI & Ors vs. M. Bhaskaran 1996 (1) SCSLJ 1* in which their Lordships held that mere continuity on the post for a number of years on the basis of fraudulently obtained employment orders does not create any equity in favour of employee or any estoppel against the employer. He also relied on the judgement of Tribunal Bench at Mumbai in O.A. No.963/99 dated 20th June 2003.

10. We have considered the rival submissions adduced on behalf of the parties, perused the pleadings on record and the case laws cited by the counsel for the respondents. We have also considered the M.Ps. for condonation of delay in OAs. as well as in the Rejoinder. M.Ps. are allowed condoning the delay. In all these three OAs. the Presenting Officer had adduced the evidence of two Vigilance Officers in whose presence all the three delinquent applicants had given their confessional statements in their respective Enquiries held against them separately. It is to be noted that all the three delinquent applicants are not at dispute that their statements have been recorded in the presence of these two Vigilance Officers. It is their contention that the statements were recorded in the office of Vigilance Branch. The statements in respect of applicants in O.A No.791/00 and 792/00.....

were written by Shri K.R. Inasu working as Assistant Yard Master at Kurla in English. Both the applicants have put their signatures in English as well as their names in English on the respective statements recorded on 13.12.1993 whereas the applicant in OA793/00 had written down his statement himself in Marathi language on 21.2.1994 in the preliminary enquiry held against him. All the three applicants in these present OAs have separately stated that their statements were taken in the office of Vigilance Branch. They were suddenly called in the Vigilance Office without giving any reasons. According to them they were not in a position to know the mistake committed by them and they were under tension. It is their contention that their statements were recorded when they were under tension and they were victims of circumstances. No where it is their contention that the statements made by them were under pressure or under coercion or under any influence. It is the only contention of the applicants that they made statements when they were in tension. Both the Vigilance Officer who were present while recording the statements in the respective DE. of these applicants have stated before the Enquiry Officer that the statements were recorded by one K.R. Inasu, working as Assistant Yard Master in respect of applicants in OAs. 791/00 and 792/00 on their request and their signatures were put by them on their own free will and consent. The applicant in OA.No.793/00 also stated in his statement recorded on 21.2.1994 and confessed that he had managed to secure employment with the Railways by means of bribe, misrepresentation, fraud and other foul means and he had not worked with the Railways prior to his appointment at Kurla Car Shed i.e. 20.12.1990. The statement in question in respect

of Applicant in OA.793/00 was written in Marathi language by the applicant himself. It has also come in the evidence of these two Vigilance Officers that they had checked the record during the investigation, and nowhere they found the names of the applicants appearing in the record. Thus, the Vigilance Officer stated that they never worked in the Railways prior to 16.6.1992 so far as the applicants in OA 791& 792/00 are concerned. They also stated that they did not find any documentary evidence to show that applicant in O.A.No.793/00 worked in Railways prior to his appointment in Kurla Carshed also he was not in possession of any Casual labour Service Card. It appears from the statements made by the applicants in the presence of the Vigilance Officers that they had obtained the employment by unfair means and in the enquiry proceedings they have not been able to challenge the genuineness of the same. It has also come in the evidence of the Vigilance Officers that the appointment letter in respect of each applicant is not under the signature of Shri P. Balan, APO. The evidence shows that the APO Balan has not confirmed the genuineness of the appointment letter. It is stated that the then APO P.Balan has denied his signatures appearing on the appointment orders.

11. In *Orissa Mining Corporation & Anr. vs. Anand Chandra Prusty* 1997 (1) AISLJ 133 it has been held by the Apex Court that in disciplinary cases *burden to disprove may fall on the delinquent rather than burden of proving being on the department*. There is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The

burden of proof depends upon the nature of explanation and the nature of charges. In a given case, the burden may be shifted to the delinquent officer, depending upon his explanation. In the instant case the evidence of Vigilance Officers who had conducted the preliminary enquiries shows that during investigation certain irregularities were detected which led to the conclusion that the appointment order in the case of each applicants is not a genuine one. Not only that it has also come in their evidence that Shri P. Balan, APO had denied that the signatures appearing on the appointment letters of the applicants are his signatures.

12. We have already mentioned in the foregoing paragraphs that the evidence of both the Vigilance Officers before the Enquiry Officer shows that they had checked the record during the investigation and it was found that no where the names of each of the applicants were appearing which proved that they had never worked in the Railways prior to their appointment in Kurla Car Shed on the respective dates.

13. It is well settled law that in case of departmental enquiries and the findings recorded therein the Tribunal does not exercise the powers of an appellate authority. The jurisdiction of the Tribunal in such case is very limited, for instance, where it is found that domestic enquiry is vitiated for non observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and punishment is totally disproportionate to the proved misconduct. In the limited scope of judicial review sufficiency or otherwise of the evidence cannot be looked into by the Tribunal.

14. In the case of *Shashikant S. Patil (supra)* the Apex Court has observed that "if there is some legal evidence on which the findings can be based, then adequacy or even reliability of

that evidence is not a matter for canvassing before the Court" In the instant case, the Enquiry Officer has relied on the confessional statements made by each of the applicants in their respective Departmental Enquiries before the Vigilance Officers, not only that he also held that the appointment letters do not bear the signature of APO P. Balan and thus, those are not the genuine one. Their evidence shows that Shri Balan had stated that the signature appearing on the appointment letters are not his signatures. Not only that but evidence of the Enquiry Officer also shows that there is absolutely no record to show that any of the applicants had ever worked in the Railways prior to their appointment in question in the Kurla Car Shed. The judicial review cannot extend to the examination of the correctness of the charges or the reasonableness of the decision. The Tribunal has no jurisdiction to look into the correctness of the findings recorded by the disciplinary authority when the same is based on the some evidence.

15. In State Bank of Bikanare 1995 (6) SCC (L&S 279 it is held by the Apex Court that if the disciplinary authority, before concurring with findings of inquiry officer, goes through the entire proceedings and applies its mind and accept the reasons given him in support of such findings, it is not necessary for punishing authority to re-appraise the evidence to arrive at the same findings.

16. It appears from the evidence brought before the Enquiry Officer that the applicants have never worked in the Railways at any time before their appointments in question. They had not undergone the training as Assistant Pointsman before the

engagement in Kurla Car Shed. During the investigations and the Departmental Enquiries held in the case of each applicants, it was proved that each applicants had obtained the employment with the Respondents by using unfair, means. The respondents have rightly relied on the judgement in the case of *R.Vishwanatha Pillai (supra)* in which the Apex Court held that where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law. Under the circumstances, Article 311 of the constitution is not attracted.

17. We have discussed the case of each applicant after perusing the papers in each O.As. and examined the merit of each case. The respondents have also affirmed that the applicants were given personal hearing separately and thereafter the impugned orders have been passed. In the light of our above discussion and in the facts and circumstances in each of these cases, we find no merit which warrants interference with the impugned orders in these O.As. Accordingly, all the three O.As. are dismissed. No costs.

(S.G. Deshmukh)
Member (J)

(Anand Kumar Bhatt)
Member (A)

sj*