

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 7 APR 1988

APPLICATION NO 300 / 87(F)

W.P. NO. _____

Applicant

Shri Billa Solomon

To

Respondent

V/s

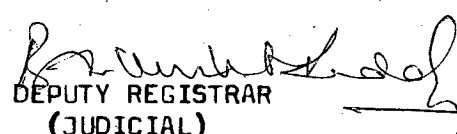
The Asst. Works Manager, South Central
Railway, Hubli & 2 Ors

1. Shri Billa Solomon
C/o Shri Suresh S. Joshi
Advocate
15, 3rd Cross
Nehru Nagar
Bangalore - 560 020
2. Shri Suresh S. Joshi
Advocate
15, 3rd Cross
Nehru Nagar
Bangalore - 560 020
3. The Assistant Works Manager
South Central Railway Workshop
Hubli
Dharwad District

4. The Production Engineer
South Central Railway Workshop
Hubli
Dharwad District
5. The Additional Chief Mechanical Engineer
South Central Railway Workshop
Hubli
Dharwad District
6. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbonpet Main Road
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application on 29-3-88.


DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

9c

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH
BANGALORE

DATED: THE 29TH DAY OF MARCH, 1988

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY.. VICE CHAIRMAN.

THE HON'BLE MR. L.H.A. REGO ... MEMBER(A)

APPLICATION NO. 300 OF 1987 (F)

Billa Solomon,
T.No.2404, Foundry Shop,
South Central Railways
Workshops, Hubli & Ors. .. Applicant.

(By Shri Suresh S. Joshi, Advocate for the
Applicant)

-vs.-

1. Assistant Works Manager,
South Central Railways Workshop,
Hubli.
2. The Production Engineer,
South Central Railways Workshop,
Hubli.
3. The Deputy Chief Mechanical Engineer,
South Central Railways Workshop,
Hubli (New upgraded as Additional
Chief Mechanical Engineer).

Respondents.

(Shri M. Sreerangaiah, Railway Advocate for the Respts.)

This application coming on for hearing,

The Hon'ble Shri L.H.A. Rego, Member(A), made the
following:

Order

O r d e r



ORDER

In this application transferred by the High Court of Judicature, Karnataka, under Sec.29 of the Administrative Tribunals Act,1985, the applicant has assailed the impugned Order dated 17-7-1980(Annexure-B) passed by Respondent(R) 1, as Disciplinary Authority(DA), removing him from service, with immediate effect and the other impugned Order dated 30-7-1980(Annexure-D) passed by R-2, as Appellate Authority (AA), turning down his appeal, as also the Order dated 6-3-1987 (Annexure-G), passed by R-2, and prays that these Orders be quashed, with consequential benefits.

2. The following salient facts bring out the case, in its bold relief, to help determine the questions raised. The applicant states, that he worked as a Casual Labourer(CL), in the railways from 1-2-1966 to 30-7-1969, and that on 19-9-1969, he applied for the post of Khalasi, in the Railway Workshop of the South Central Railway(S.C.Rly.), Hubli, stating in column 10 thereof, that he had worked as CL, during the aforesaid period in the railways. He is said to have produced a CL Certificate from the Inspector of Works, Hubli, in the prescribed form, in support, duly signed by the latter, with his seal affixed thereon. The applicant further states, that after due verification of this certificate,



al

he

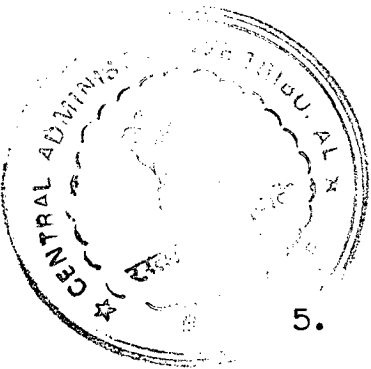
he was appointed on merit, as Khalasi in S.C.Rly. with effect from 18-9-1970, in the Railway Workshop at Hubli.

3. The respondents deny that the applicant worked as CL, during the period from 1-2-1966 to 30-7-1969 and states⁴, that the averments of the applicant, in connection thereto, are concocted and that the applicant secured employment as Khalasi in the S.C.Rly, fraudulently.

4. On 5-12-1974, a chargesheet was served on him by R-1, under Rule 9 of the Railway Servants (Discipline and Appeal) Second Amendment Rules 1972, along with a statement of the article of charge and a statement of misconduct or misbehaviour in support. The article of charge framed against him reads as under:

"Shri Billa Soloman produced a CL Service Card, showing the service rendered by him as CL, from 1-2-1966 to 30-7-1969, under Inspector of Works, Railway Construction, Hubli, while applying for the post of a Khalasi, in the Hubli Workshop though he had not actually worked".

5. The said chargesheet was acknowledged by the applicant on 13-12-1974 and the departmental enquiry (DE) ensued.



del

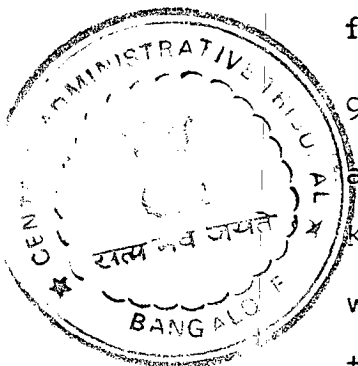
6. The applicant states, that he worked as CL from 1-2-1966 to 30-7-1967, in the name of Billa Channaiah and that he changed his name as Billa Solomen, on being baptised as a Christian on 14-9-1969, in proof of which, he had produced the requisite baptismal certificate, before the authorities concerned.

7. The applicant alleges, that the DE was conducted against rules and in violation of the principles of natural justice, and that R-1, in his capacity as DA, by his impugned Order dated 17-7-1980 (Annexure-B), imposed the penalty of removing him from service. The applicant preferred an appeal thereon to R-2, on 28-7-1980 (Annexure-C), which was rejected by the latter on 30-7-1980 (Annexure-D).

8. Thereon, the applicant filed a representation in the form of a review petition, on 27-8-1980 (Annexure-E) to R-3, the head of the Railway Workshop at Hubli, who by his communication dated 4-9-1980, (Annexure-F) negatived the request of the applicant for review of the punishment.

9. The applicant challenged the above disciplinary action against him, in the High Court of Judicature, Karnataka, through Writ Petition No. 6933 of 1981, which was transferred to this Tribunal for disposal, consequent to the Administrative Tribunals Act, 1985 coming into force. The Writ Petition was registered in this Tribunal

anew



[Handwritten signature]

anew, as Application No. 724 of 1986 and was disposed of by the Tribunal, as under, on 31-10-1986 (Annexure-G) as the Order of the AA, was not a speaking one:

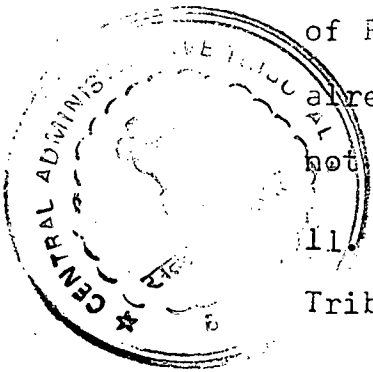
"We therefore, quash the order of the appellate authority and direct the appellate authority to restore the appeal filed by the applicant to its original file, afford him an opportunity of hearing and re-determine the same in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case and in any event within 3 months from the date of receipt of the order of this Tribunal.

6. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs."

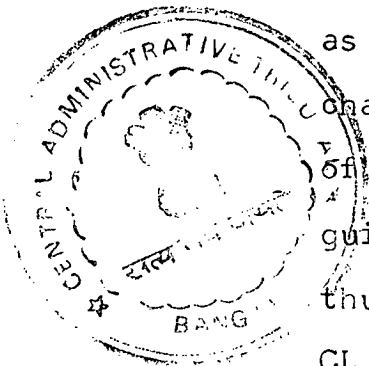
10. The respondents state, that according to the directions of this Tribunal in the above Application, R-2 ~~recommended~~ ^{reconsidered} the appeal of the applicant, after giving him a personal hearing on 26-2-1987 and after duly examining the various points urged by him in his defence and a speaking order was communicated to him, under the signature of R-1 on 6-3-1987 (Annexure-H), stating that the punishment already imposed on him, was justified and therefore, did not necessitate modification.

11. Aggrieved, the applicant has approached this Tribunal, through the present application for redress.

12. Shri Suresh S. Joshi, learned Counsel for the applicant, contended, that even the present order dated 6-3-1987 of R-2 as AA (Annexure-G), communicated by R-1, was not a speaking



one and ~~that~~^{not} in faithful compliance with the directions given by this Tribunal, on 31-10-1986, in Application No.724 of 1986; that the identify of the persons concerned, was not disputed, either by the Appointing Authority or the AA; that his client did not furnish false information to the administration and secure employment fraudulently as alleged; that the DE was not conducted in accordance with the prescribed procedure, under the Railway Servants(Discipline and Appeal) Rules, 1968, in that the evidence of the prosecution witnesses was not recorded in a narrative form as examination-in-chief but strange enough straightaway commenced with cross-examination and therefore was violative of natural justice and vitiated the DE; that both the Inquiry Officer(IO) and the DA, had not applied their mind to the facts of the case and the evidence on record; that there is no evidence to show, that the applicant had not worked as CL during the period from 1-2-1966 to 30-7-1969 and that the finding of the IO is based on "no evidence"; that the applicant was duly baptised as a Christian on 14-9-1969 and the mere fact that he changed his name from that of Billa Channiah to that of Billa Solomon, as a consequence, does not render him guilty of the charge levelled against him; that the thumb impression of the applicant on the payment voucher, CL card, Certificate and in the application form for the post of Khalasi, are all the same as confirmed by expert opinion.

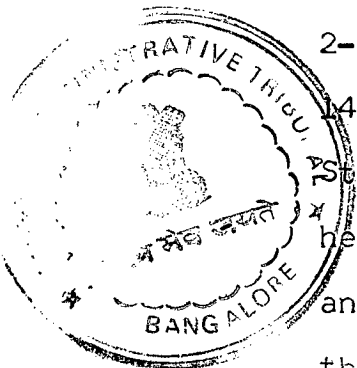


Ch

13. Relying on the ruling of the Supreme Court in AIR 1957 SC 882 (UNION OF INDIA v. T.R.VARMA), Shri Joshi contended, as no examination-in-chief of the concerned witnesses was recorded in this case, in the presence of the applicant, he was denied the opportunity of a fair hearing and justice and therefore, the DE was vulnerable to attack.

14. Calling in aid, the decision in AIR 1967 MADHYA - PRADESH, 91 (RAMSHAKLAL YADAV v. CHIEF SECURITY OFFICER, RAILWAY PROTECTION FORCE, BOMBAY & ORS.), Shri Joshi submitted, that an enquiry in which the delinquent officer is examined at the very threshold and thereafter several times, as and when the evidence of witnesses is recorded cannot be held to be fair, giving that officer a reasonable opportunity of substantiating his defence.

15. Repelling each of the above contentions, Shri M. Sreerangaiah, learned Counsel for the respondents, submitted, that the applicant had not proved that he had worked as CL during the period from 1-2-1966 to 30-7-1969, under the name Billa Solomon. The Baptismal Certificate dated 2-3-1970, showing his date of baptism as a Christian, on 14-9-1969 (said to have been issued by the Pastor of St. John's Lutheran Church, Hubli) produced by the applicant he said, was an afterthought, as his father who was also an employee in the railway workshop, was a Christian throughout and the applicant's School certificate (upto VIIth Standard) also bore his Christian name, Billa - Solomon.



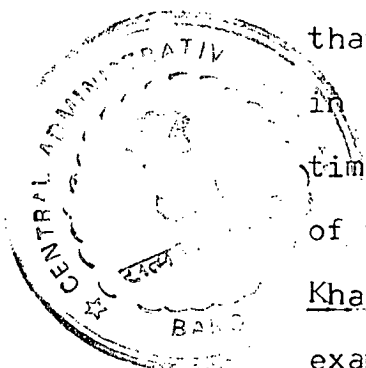
SL

16. Shri

16. Shri Sreerangaiah pointed out, that, the birth date of the applicant was 25-10-1948, according to which, he was underage, to be appointed as CL from 1-2-1966, ^{as} the minimum age prescribed being 18 years. The motive of the applicant masquerading under a pseudonym, was therefore at once apparent, he said.

17. The authorities concerned in the DE viz., the IO, DA and the AA, he said, had duly taken into account, the evidence available and the procedure laid down in the relevant disciplinary rules, in regard to conduct of the DE proceedings, as also the principles of natural justice in the discharge of their respective roles in the DE, and therefore, the DE was not vitiated as alleged by Shri Joshi. Both the DA and the AA, he affirmed, had passed a speaking order, in compliance with the directions of this Tribunal in the aforesaid Application No. 724 of 1986.

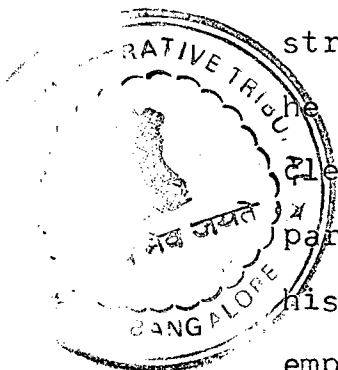
18. We have examined the rival contentions carefully as also the material placed before us. The gut issue that falls for consideration is, whether the alleged change in religion from Hinduism to Christianity at the crucial time, which appears to be the sheet-anchor of the defence of the applicant, in his effort to secure employment as a Khalasi in the S.C. Rly., is a fact ^{of} a fraud. Let us examine and analyse carefully, the genesis of this so called change in his religion. It is not disputed, that the father



LL

of the applicant, who is also an employee in the S.C.Rly. and bears a Christian name - Billa John, was a Christian by birth. If so, the applicant has not adduced any evidence, as to when and how, he changed his religion to Hinduism after his birth, so as to necessitate his being baptised as a Christian anew, on 14-9-1969, according to the baptismal certificate produced by him (vide para-15 supra).

19. His school certificate pertaining to the VIIth Standard shows, that he was admitted to this Standard on 1-6-1958 and that certificate bears the date, namely 5-10-1961. The ^{religion}~~caste~~ of the applicant shown therein is "Indian Christian". These dates are anterior to the date of the Christian baptism viz. 14-9-1969, by as many as 8. to 11 years. If the applicant was a Christian by birth and so continued in his religious faith as a Christian upto 1961, as the above school certificate reveals, and there is no proof that he was converted to Hinduism, thereafter, there is no reason, as to why he should have produced a baptismal certificate dated 2-3-1970 to show, that he was baptised as Christian again on 14-9-1969, which date, strange enough, is proximate to 30-7-1969, upto which he is said to have worked as CL in the railways. There is clearly more than what meets the eye in this episode, particularly taking into account, that the applicant with his birth date as 25-10-1948, could not have secured employment in the railways on 1-2-1966, when he would have been below the prescribed minimum age limit of 18 years.

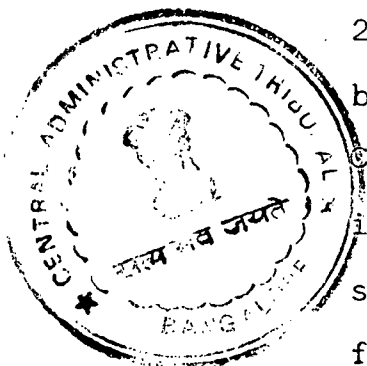


KL

20. Besides, in his written statement of defence dated nil., given by the applicant in the course of the DE, he has stated, that he was a Hindu with the name Billa Channaiah, when he served as a CL in the railways, and that he was converted as a Christian on 14-9-1969.

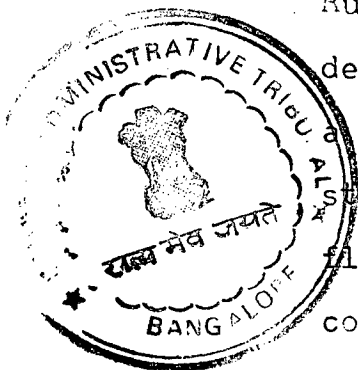
21. We have also examined minutely the CL Service Card standing in the name of Billa Soloman, said to have been issued by one Shri Sivaram Someshwar, Inspector of Works Construction, S.C.Rly., Hubli, in July 1969. Shri Someshwar has disavowed that this CL Service Card was attested by him. Glaring aberrations and disparities therein, such as: change in the shade of ink and of handwriting in respect of the entries made therein on the same date, the striking laboured signature therein, said to be that of Shri Someshwar, which does not conform to the mould and in fact, exactitude of his true signature, and the rubber seal of designation of Shri Someshwar being discrepant barely within a period of less than a month and a half cast serious doubt on the veracity of this CL Service Card.

22. Baptismal certificate dated 2-3-1970 produced by the applicant, to show that he was reconverted as Christian, does not inspire confidence but on the contrary, is highly suspect of an ulterior motive on his part to secure employment fraudulently in the railways. The above facts viewed in their entirety, go to prove conclusively, that the applicant who was Christian by birth, had at no time changed his faith from that of a Christian to that of a Hindu and had assume the name, Billa Channaiah. The



thing speaks for itself - res ipsa loquitur. It is clearly manifest, that his plea of change of religion with a strange proximity to the dates aforementioned is a classic case of mendacity and that he had not worked as CL in the railways, either in the name of Billa Channaiah or Billa Solomon during the period from 1-2-1966 to 30-7-1969, which calls for serious notice. On this ground alone, the entire defence of the applicant stands demolished, as not to warrant consideration of the other grounds urged by him to advance his case, such as violation of natural justice and other infirmities which he alleges have crept in, in the conduct of the DE held against him.

23. Nevertheless, in the interests of justice, we shall proceed to examine the other contentions as well, urged by Shri Joshi, learned Counsel for the applicant. These contentions, centre mainly on the alleged infirmities in the conduct of the DE against the applicant and on the denial of fair and reasonable opportunity to him to substantiate his defence. The main thrust of his attack is, on the procedure as prescribed in the 1972 Rules, not being adhered to and on the recording of evidence of the prosecution witnesses not being in the form of a running narration as examination-in-chief, but in the style of an abrupt and inchoate cross-examination. This flagrant departure from the prescribed procedure, Shri Joshi contended, was prejudicial to the defence of the applicant.



NA

24. We have examined carefully the deposition of the concerned witnesses. Though the deposition gives an appearance of the format of a cross-examination, a close analysis of their content reveals, that the applicant was not denied the freedom and opportunity of eliciting whatever details he desired from these witnesses in substantiating his defence. Besides, in the course of the DE, the applicant did not raise any objection in regard to this procedure of recording the evidence and specially in regard to his being denied a fair and reasonable opportunity to plead his defence.

25. In fact, the Supreme Court ruling relied upon by Shri Joshi in T.R.VARMA's case, instead of coming to his aid, on the contrary, shows that in the light of the foregoing, the applicant was not denied reasonable opportunity to substantiate his defence as is evident from the following ratio of that ruling:

"The Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that



Handwritten signature

that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

26. The decision in RAMSHAKLAL YADAV's case, on which, Shri Joshi places reliance, also does not come to his succour in the light of para-25 supra. It may be stated that in disciplinary proceedings, the technicalities of criminal law are not invoked and strict proof enjoined by the Evidence Act, not applied with equal rigour.

27. We have perused the proceedings of the DE and are convinced that the I.C., DA and the AA, have all, afforded a fair and reasonable opportunity to the applicant, to plead his defence and have carefully examined the various points urged by the applicant, in his defence and that the AA in particular, has substantially complied with the directions given by us in Application No. 724 of 1986, referred to above.

28. It is apparent from the above discussion and analysis, that the applicant had committed a fraud in securing employment as a Khalasi in the railways. It



is

is a well known maxim that it is a fraud, to conceal fraud - fraus est celere fraudem. A person who commits fraud and comes with tainted hands, before the Tribunal, cannot expect protection, by the help of any judicial process.

29. The various arguments of Shri Joshi particularly in regard to change of religion by the applicant, do not cohere and do not cogently bridge the premise and its conclusion, in regard to the innocence of the applicant.

30. In fact, the impugned Order dated 30-7-1980 (Annexure-D) passed by R-2 as AA, which the applicant now prays be quashed, has in fact been annulled by the Order of this Tribunal in Application No.724 of 1986.

31. In the result, the application fails and is liable to be dismissed. We therefore dismiss the same, but with no order as to costs.

Sd/-


(K.S. PUTTASWAMY)
VICE CHAIRMAN

29/7/1985

Sd/-

(L.H.A. REGO) 29.7.85
MEMBER (A)

TRUE COPY


DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
II Floor, Indiranagar,
Bangalore- 560 038.

Dated: **7 APR 1988**

To

1. Shri.Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Administrative Tribunal Reporter,
Post Box No.1518,
Delhi- 110 006.
3. The Editor,
Administrative Tribunal Cases,
C/o.Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s.All India Reporter,
Congressnagar,
Nagpur.

Sir,

I am directed to forward herewith a copy of the ~~under~~
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Justice K.S. Puttaswamy Vice-Chairman/
Member(J) and Hon'ble Mr. L.H.A. Rega Member(A)
with a request for publication of the order in the Journals.

Order dated 29-3-88 passed in A.Nos. 300/87(F.)

Yours faithfully,

sd/-
(B.V.VENKATA REDDY)
DEPUTY REGISTRAR(J).

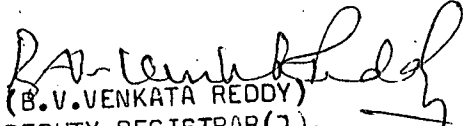
q/c

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compunds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex (CBD), 1st Floor, Near Kankon Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur (MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o. Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Bolamundai, Cuttack- 753001.

Copy with enclosure also to:

1. Court Officer (Court I)
2. Court Officer (Court II)


(B.V. VENKATA REDDY)
DEPUTY REGISTRAR (J).

o/c

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH
BANGALORE

DATED: THE 29TH DAY OF MARCH, 1988

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY.. VICE CHAIRMAN.

THE HON'BLE MR. L.H.A. REGO ... MEMBER(A)

APPLICATION NO.300 OF 1987 (F)

Billa Solomon,
T.No.2404, Foundry Shop,
South Central Railways
Workshops, Hubli & Ors. .. Applicant.

(By Shri Suresh S. Joshi, Advocate for the
Applicant)

-vs.-

1. Assistant Works Manager,
South Central Railways Workshop,
Hubli.
2. The Production Engineer,
South Central Railways Workshop,
Hubli.
3. The Deputy Chief Mechanical Engineer,
South Central Railways Workshop,
Hubli (New upgraded as Additional
Chief Mechanical Engineer). Respondents.

(Shri M. Sreerangaiah, Railway Advocate for the Respts.)

This application coming on for hearing,

The Hon'ble Shri L.H.A. Rego, Member(A), made the
following:

MA

O r d e r

ORDER

In this application transferred by the High Court of Judicature, Karnataka, under Sec.29 of the Administrative Tribunals Act,1985, the applicant has assailed the impugned Order dated 17-7-1980(Annexure-B) passed by Respondent(R) 1, as Disciplinary Authority(DA), removing him from service, with immediate effect and the other impugned Order dated 30-7-1980(Annexure-D) passed by R-2, as Appellate Authority (AA), turning down his appeal, as also the Order dated 6-3-1987 (Annexure-G), passed by R-2, and prays that these Orders be quashed, with consequential benefits.

2. The following salient facts bring out the case, in its bold relief, to help determine the questions raised. The applicant states, that he worked as a Casual Labourer(CL), in the railways from 1-2-1966 to 30-7-1969, and that on 19-9-1969, he applied for the post of Khalasi, in the Railway Workshop of the South Central Railway(S.C.Rly.), Hubli, stating in column 10 thereof, that he had worked as CL, during the aforesaid period in the railways. He is said to have produced a CL Certificate from the Inspector of Works, Hubli, in the prescribed form, in support, duly signed by the latter, with his seal affixed thereon. The applicant further states, that after due verification of this certificate,

al

he

he was appointed on merit, as Khalasi in S.C.Rly. with effect from 18-9-1970, in the Railway Workshop at Hubli.

3. The respondents deny that the applicant worked as CL, during the period from 1-2-1966 to 30-7-1969 and states⁴, that the averments of the applicant, in connection thereto, are concocted and that the applicant secured employment as Khalasi in the S.C.Rly, fraudulently.

4. On 5-12-1974, a chargesheet was served on him by R-1, under Rule 9 of the Railway Servants (Discipline and Appeal) Second Amendment Rules 1972, along with a statement of the article of charge and a statement of misconduct or misbehaviour in support. The article of charge framed against him reads as under:

"Shri Billa Solomon produced a CL Service Card, showing the service rendered by him as CL, from 1-2-1966 to 30-7-1969, under Inspector of Works, Railway Construction, Hubli, while applying for the post of a Khalasi, in the Hubli Workshop though he had not actually worked".

5. The said chargesheet was acknowledged by the applicant on 13-12-1974 and the departmental enquiry (DE) ensued.

del

6. The applicant states, that he worked as CL from 1-2-1966 to 30-7-1967, in the name of Billa Channaiah and that he changed his name as Billa Solomen, on being baptised as a Christian on 14-9-1969, in proof of which, he had produced the requisite baptismal certificate, before the authorities concerned.
7. The applicant alleges, that the DE was conducted against rules and in violation of the principles of natural justice, and that R-1, in his capacity as DA, by his impugned Order dated 17-7-1980 (Annexure-B), imposed the penalty of removing him from service. The applicant preferred an appeal thereon to R-2, on 28-7-1980 (Annexure-C), which was rejected by the latter on 30-7-1980 (Annexure-D).
8. Thereon, the applicant filed a representation in the form of a review petition, on 27-8-1980 (Annexure-E) to R-3, the head of the Railway Workshop at Hubli, who by his communication dated 4-9-1980, (Annexure-F) negatived the request of the applicant for review of the punishment.
9. The applicant challenged the above disciplinary action against him, in the High Court of Judicature, Karnataka, through Writ Petition No. 6933 of 1981, which was transferred to this Tribunal for disposal, consequent to the Administrative Tribunals Act, 1985 coming into force. The Writ Petition was registered in this Tribunal



anew

anew, as Application No. 724 of 1986 and was disposed of by the Tribunal, as under, on 31-10-1986 (Annexure-G) as the Order of the AA, was not a speaking one:

"We therefore, quash the order of the appellate authority and direct the appellate authority to restore the appeal filed by the applicant to its original file, afford him an opportunity of hearing and re-determine the same in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case and in any event within 3 months from the date of receipt of the order of this Tribunal.

6. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs."

10. The respondents state, that according to the directions of this Tribunal in the above Application, R-2 ~~recommended~~ ^{reconsidered} the appeal of the applicant, after giving him a personal hearing on 26-2-1987 and after duly examining the various points urged by him in his defence and a speaking order was communicated to him, under the signature of R-1 on 6-3-1987 (Annexure-H), stating that the punishment already imposed on him, was justified and therefore, did not necessitate modification.

11. Aggrieved, the applicant has approached this Tribunal, through the present application for redress.

12. Shri Suresh S. Joshi, learned Counsel for the applicant, contended, that even the present order dated 6-3-1987 of R-2 as AA (Annexure-G), communicated by R-1, was not a speaking

one and ~~that~~^{not} in faithful compliance with the directions given by this Tribunal, on 31-10-1986, in Application No.724 of 1986; that the identify of the persons concerned, was not disputed, either by the Appointing Authority or the AA; that his client did not furnish false information to the administration and secure employment fraudulently as alleged; that the DE was not conducted in accordance with the prescribed procedure, under the Railway Servants(Discipline and Appeal) Rules, 1968, in that the evidence of the prosecution witnesses was not recorded in a narrative form as examination-in-chief but strange enough straightaway commenced with cross-examination and therefore was violative of natural justice and vitiated the DE; that both the Inquiry Officer(IO) and the DA, had not applied their mind to the facts of the case and the evidence on record; that there is no evidence to show, that the applicant had not worked as CL during the period from 1-2-1966 to 30-7-1969 and that the finding of the IO is based on "no evidence"; that the applicant was duly baptised as a Christian on 14-9-1969 and the mere fact that he changed his name from that of Billa Channiah to that of Billa Solomon, as a consequence, does not render him guilty of the charge levelled against him; that the thumb impression of the applicant on the payment voucher, CL card, Certificate and in the application form for the post of Khalasi, are all the same as confirmed by expert opinion.

KL

13. Relying on the ruling of the Supreme Court in AIR 1957 SC 882 (UNION OF INDIA v. T.R.VARMA), Shri Joshi contended, as no examination-in-chief of the concerned witnesses was recorded in this case, in the presence of the applicant, he was denied the opportunity of a fair hearing and justice and therefore, the DE was vulnerable to attack.

14. Calling in aid, the decision in AIR 1967 MADHYA - PRADESH, 91 (RAMSHAKLAL YADAV v. CHIEF SECURITY OFFICER, RAILWAY PROTECTION FORCE, BOMBAY & ORS.), Shri Joshi submitted, that an enquiry in which the delinquent officer is examined at the very threshold and thereafter several times, as and when the evidence of witnesses is recorded cannot be held to be fair, giving that officer a reasonable opportunity of substantiating his defence.

15. Repelling each of the above contentions, Shri M. Sreerangaiah, learned Counsel for the respondents, submitted, that the applicant had not proved that he had worked as CL during the period from 1-2-1966 to 30-7-1969, under the name Billa Solomon. The Baptismal Certificate dated 2-3-1970, showing his date of baptism as a Christian, on 14-9-1969 (said to have been issued by the Pastor of St. John's Lutheran Church, Hubli) produced by the applicant he said, was an afterthought, as his father who was also an employee in the railway workshop, was a Christian throughout and the applicant's School certificate (upto VIIth Standard) also bore his Christian name, Billa - Solomon.

dh

16. Shri

16. Shri Sreerangaiah pointed out, that, the birth date of the applicant was 25-10-1948, according to which, he was underage, to be appointed as CL from 1-2-1966, ^{as} the minimum age prescribed being 18 years. The motive of the applicant masquerading under a pseudonym, was therefore at once apparent, he said.

17. The authorities concerned in the DE viz., the IO, DA and the AA, he said, had duly taken into account, the evidence available and the procedure laid down in the relevant disciplinary rules, in regard to conduct of the DE proceedings, as also the principles of natural justice in the discharge of their respective roles in the DE, and therefore, the DE was not vitiated as alleged by Shri Joshi. Both the DA and the AA, he affirmed, had passed a speaking order, in compliance with the directions of this Tribunal in the aforesaid Application No. 724 of 1986.

18. We have examined the rival contentions carefully as also the material placed before us. The gut issue that falls for consideration is, whether the alleged change in religion from Hinduism to Christianity at the crucial time, which appears to be the sheet-anchor of the defence of the applicant, in his effort to secure employment as a Khalasi in the S.C. Rly., is a fact ^{of} a fraud. Let us examine and analyse carefully, the genesis of this so called change in his religion. It is not disputed, that the father

SP

of

of the applicant, who is also an employee in the S.C.Rly. and bears a Christian name - Billa John, was a Christian by birth. If so, the applicant has not adduced any evidence, as to when and how, he changed his religion to Hinduism after his birth, so as to necessitate his being baptised as a Christian anew, on 14-9-1969, according to the baptismal certificate produced by him (vide para-15 supra).

19. His school certificate pertaining to the VIIth Standard shows, that he was admitted to this Standard on 1-6-1958 and that certificate bears the date, namely 5-10-1961. The ^{religion}~~caste~~ of the applicant shown therein is "Indian Christian". These dates are anterior to the date of the Christian baptism viz. 14-9-1969, by as many as 8. to 11 years. If the applicant was a Christian by birth and so continued in his religious faith as a Christian upto 1961, as the above school certificate reveals, and there is no proof that he was converted to Hinduism, thereafter, there is no reason, as to why he should have produced a baptismal certificate dated 2-3-1970 to show, that he was baptised as Christian again on 14-9-1969, which date strange enough, is proximate to 30-7-1969, upto which he is said to have worked as CL in the railways. There is clearly more than what meets the eye in this episode, particularly taking into account, that the applicant with his birth date as 25-10-1948, could not have secured employment in the railways on 1-2-1966, when he would have been below the prescribed minimum age limit of 18 years.

KL

20. Besides, in his written statement of defence dated nil., given by the applicant in the course of the DE, he has stated, that he was a Hindu with the name Billa Channaiah, when he served as a CL in the railways, and that he was converted as a Christian on 14-9-1969.

21. We have also examined minutely the CL Service Card standing in the name of Billa Soloman, said to have been issued by one Shri Sivaram Someshwar, Inspector of Works Construction, S.C.Rly., Hubli, in July 1969. Shri Someshwar has disavowed that this CL Service Card was attested by him. Glaring aberrations and disparities therein, such as: change in the shade of ink and of handwriting in respect of the entries made therein on the same date, the striking laboured signature therein, said to be that of Shri Someshwar, which does not conform to the mould and in fact, exactitude of his true signature, and the rubber seal of designation of Shri Someshwar being discrepant barely within a period of less than a month and a half cast serious doubt on the veracity of this CL Service Card.

22. Baptismal certificate dated 2-3-1970 produced by the applicant, to show that he was reconverted as Christian, does not inspire confidence but on the contrary, is highly suspect of an ulterior motive on his part to secure employment fraudulently in the railways. The above facts viewed in their entirety, go to prove conclusively, that the applicant who was Christian by birth, had at no time changed his faith from that of a Christian to that of a Hindu and had assume the name, Billa Channaiah. The

thing speaks for itself - res ipsa loquitur. It is clearly manifest, that his plea of change of religion with a strange proximity to the dates aforementioned is a classic case of mendacity and that he had not worked as CL in the railways, either in the name of Billa Channaiah or Billa Solomon during the period from 1-2-1966 to 30-7-1969, which calls for serious notice. On this ground alone, the entire defence of the applicant stands demolished, as not to warrant consideration of the other grounds urged by him to advance his case, such as violation of natural justice and other infirmities which he alleges have crept in, in the conduct of the DE held against him.

23. Nevertheless, in the interests of justice, we shall proceed to examine the other contentions as well, urged by Shri Joshi, learned Counsel for the applicant. These contentions, centre mainly on the alleged infirmities in the conduct of the DE against the applicant and on the denial of fair and reasonable opportunity to him to substantiate his defence. The main thrust of his attack is, on the procedure as prescribed in the 1972 Rules, not being adhered to and on the recording of evidence of the prosecution witnesses not being in the form of a running narration as examination-in-chief, but in the style of an abrupt and inchoate cross-examination. This flagrant departure from the prescribed procedure, Shri Joshi contended, was prejudicial to the defence of the applicant.

NA

24. We have examined carefully the deposition of the concerned witnesses. Though the deposition gives an appearance of the format of a cross-examination, a close analysis of their content reveals, that the applicant was not denied the freedom and opportunity of eliciting whatever details he desired from these witnesses in substantiating his defence. Besides, in the course of the DE, the applicant did not raise any objection in regard to this procedure of recording the evidence and specially in regard to his being denied a fair and reasonable opportunity to plead his defence.

25. In fact, the Supreme Court ruling relied upon by Shri Joshi in T.R.VARMA's case, instead of coming to his aid, on the contrary, shows that in the light of the foregoing, the applicant was not denied reasonable opportunity to substantiate his defence as is evident from the following ratio of that ruling:

"The Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that

that

NA

that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

26. The decision in RAMSHAKLAL YADAV's case, on which, Shri Joshi places reliance, also does not come to his succour in the light of para-25 supra. It may be stated that in disciplinary proceedings, the technicalities of criminal law are not invoked and strict proof enjoined by the Evidence Act, not applied with equal rigour.

27. We have perused the proceedings of the DE and are convinced that the I.O., DA and the AA, have all, afforded a fair and reasonable opportunity to the applicant, to plead his defence and have carefully examined the various points urged by the applicant, in his defence and that the AA in particular, has substantially complied with the directions given by us in Application No. 724 of 1986, referred to above.

28. It is apparent from the above discussion and analysis, that the applicant had committed a fraud in securing employment as a Khalasi in the railways. It

is

is a well known maxim that it is a fraud, to conceal fraud - fraus est celere fraudem. A person who commits fraud and comes with tainted hands, before the Tribunal, cannot expect protection, by the help of any judicial process.

29. The various arguments of Shri Joshi particularly in regard to change of religion by the applicant, do not cohere and do not cogently bridge the premise and its conclusion, in regard to the innocence of the applicant.

30. In fact, the impugned Order dated 30-7-1980 (Annexure-D) passed by R-2-as AA, which the applicant now prays be quashed, has in fact been annulled by the Order of this Tribunal in Application No.724 of 1986.

31. In the result, the application fails and is liable to be dismissed. We therefore dismiss the same, but with no order as to costs.

Sd/-

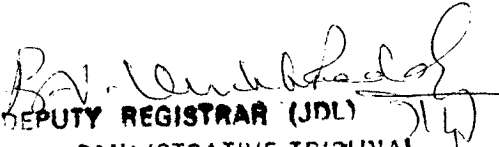
(K.S. PUTTASWAMY)
VICE CHAIRMAN

29/3/1985

Sd/-

(L.H.A. REGO) 29.3.85
MEMBER (A)

TRUE COPY


DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE