

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 404/91

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DATE OF DECISION 12.3.1993

Shri Janardhan D. Mhatre Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.S.Deshpande, Vice Chairman

The Hon'ble Shri M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ? no
- [Signature]*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 404/91

Shri Janardhan D.Mhatre

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri G.S.Walia
Advocate
for the Applicant

Shri N.K.Srinivasan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 12.3.93

(PER: M.S.Deshpande, Vice Chairman)


The only point which arises for our consideration is whether the finding of the enquiry officer is vitiated because of total absence of evidence. The charge against the applicant was of violating Rule 3 (1) (i) (iii) of the Railway Services (Conduct) Rules, 1966 in which he has produced a forged fabricated School Leaving Certificate for securing Railway appointment. Only one witness, a Railway Inspector, came to be examined. The controversy was whether the applicant was born on 1.3.1952 as he claimed when he joined service and had produced a birth certificate or whether he is born on 1.3.1947 as was contended by the Department. Shri Rathod, Welfare Inspector stated in his examination-in-chief that he had personally seen the School General Register in which it is mentioned that the applicant's date of birth is 1.3.1947 and it was also available in the school. The certificate which was produced by the applicant before the authorities earlier at the time of his appointment was appearing to ^{ed have been} returned to him and a zerox copy was retained.

The applicant denied that he has the original document with him and insisted upon the department to produce the same. It is not clear from the record whether there was any variance between the zerox copy and the original record. No witness was examined before the enquiry officer to show that the document on the original record filed by the applicant had not been signed by the school authority and that it was a forged or fabricated document. Merely because the contents of the zerox copy did not tally with the birth certificate which had been produced would not show that it was either forged or fabricated. The charge referred to Rule 3 (i) to (iii) which requires every Railway servant shall at all times :-

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a railway or Government servant.

In order to bring home this charge to the applicant, it was necessary to adduce evidence to show that the document was forged or fabricated. As we have indicated, there is no evidence in support of this charge and this was clearly a case of no evidence and there was no reliable material on which the charge could be founded.

2. We are clear that this was a case of perverse finding and the applicant should not have been terminated when the charge had not been established. We, therefore, set aside the order and direct that the applicant be reinstated in service with half back wages and back in service. The order be implemented within three months from today. No order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN