IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1288/92.

Date of Decision: 7-4-98

P.L.Malunskar, .. Applicant

Shri D.V.Gangal. .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri S.C.Dhawan. .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

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

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

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1288 /92.

this the 7th day of April 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Pandarinath Laxman Malunskar,
Malunskar Niwas,
Bhagat Singh Chowk,
Sanjay Nagar, Mumbra,
Dist. Thane - 400 612. ... Applicant.

(By Advocate Shri D.V.Gangal).

V/s.

1. The Union of India through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
3. The Chief Yard Master,
Bombay V.T. Yard,
Central Railway,
Bombay V.T. - 400 001. ... Respondents.

(By Advocate Shri S.C.Dhawan)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard the learned counsel appearing on both sides.

2. The applicant's case is that he came to be appointed as an Assistant Pointsman in the Central Railway and he worked in that post for thirteen months from 24.7.1991 to 30.8.1992. But, suddenly by an oral order the applicant's services were terminated w.e.f. 1.9.1992 and that there is no provision for any such oral termination order. Anyhow, the applicant is not working from 1.9.1992. Since the applicant had worked for 13 months he has acquired

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temporary status under the Railway Rules. The applicant's work was satisfactory. Since the applicant had acquired temporary status he cannot be removed from service except by following the procedures under the Railway Servants Discipline and Appeal Rules. No charge sheet was issued against the applicant and no enquiry was held before passing the oral order of termination. The applicant has not committed any mis-conduct. Hence it is alleged that the oral order of termination is illegal, void and is liable to be set aside. Therefore, the application is filed praying for quashing the oral order of termination and for a direction to the respondents to reinstate the applicant with full back wages with continuity in service and for other consequential reliefs.

3. The respondents have taken the stand in their reply that the applicant was never appointed in Railway Service. It is alleged that the applicant has gained entry into the service by forged and manipulated document. There was no contract of employment between the applicant and the respondents. The applicant was never appointed by the Railway Administration. The department had issued an appointment order dt. 4.6.1991 to one Shri Arvind Babubhai. The said Shri Arvind Babubhai was working for some time and he left the job. It is alleged that thereafter the applicant ~~with coalition~~ in collusion with one Shri A.R. Solanki, Senior Head Clerk in the Railways, has managed to get the order of appointment of Arvind Babubhai tampered with and got it manipulated by entering his name and started attending work. When this fraud and manipulation of record came to the notice of the concerned officer, the applicant was put off from duties w.e.f. 1.9.1992. Necessary

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disciplinary action has been ~~issued~~ taken against Shri A.R.Solanki. Since the applicant was never appointed, the question of holding disciplinary enquiry under the rules or acquiring temporary status etc. do not arise. Since the applicant was never appointed the question of issuing a written order of termination does not arise. It is therefore stated that the applicant has no case and the application is liable to be dismissed.

4. The learned counsel for the applicant contended that the applicant having worked for more than four months has acquired temporary status and is entitled to the benefit of Railway Servants Discipline and Appeal Rules and he cannot be removed except by following a departmental enquiry as per rules. He has therefore attacked the legality and validity of the oral order of termination. On the other hand, the learned counsel for the respondents contended that once there is no order of appointment at all in favour of the applicant and he has never been appointed by the Railways, the applicant gets no right in law and since he was found working in the Railway Administration in place of Arvind Babubhai by manipulating the order of appointment, he was orally told not to attend the work from 1.9.1992 and hence there is no necessity for holding a departmental enquiry.

5. It is true that if the applicant had worked for four months he has acquired temporary status and then his services cannot be terminated except in due course of law. There is no dispute about this proposition of law, Inspite of definite stand taken by the respondents that the applicant has never been appointed, Strangely, the applicant did not produce any order of appointment. In fact

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the arguments were part-heard on one day and it was adjourned to another day and even at that time the learned counsel for the respondents contended that no order of appointment has been issued to the applicant and he was never appointed. Even on the next date when the matter was fully heard, the applicant has not produced any order of appointment issued by the department. Therefore, the very appointment of the applicant in Railways itself is seriously disputed. It may be that the applicant had worked for 13 months and he has produced an Identity Card, Railway Pass etc. and this is not disputed at all. According to the respondents the applicant has gained entry into the service by working in the place of Arvind Babubhai by manipulating the appointment order issued to Arvind Babubhai. In fact, the respondents have produced along with the written statement two orders dt. 4.6.1991. The first is (Exh. - I) to the written statement where it simply shows that the appointment order dt. 4.6.1991 issued to Arvind Babubhai and the Office Order Number is shown as 11/6/91. Then we have (Exh. - II) to the written statement which also bears the same date as 4.6.1991 with the same Office Order Number 11/6/91 and all columns are same except the column showing the name of the appointee. We find that in(Exh. II) some original entry was there which has been struck off and then there is name of the applicant shown as Pandharinath Laxman. If we compare Exhibits - I and II, there is no difficulty to hold that both pertain to same person viz. Arvind Babubhai and in Exh. - I the name of Arvind Babubhai still stands, but in the second document i.e. Exh.-II Arvind Babubhai's name has been struck off and the name of the applicant is entered.

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This fully supports the respondents stand that the applicant had started working in the place of Arvind Babubhai ~~with~~ in collusion ~~the coalition~~ with the concerned Clerk by tampering with the name in the appointment order.

6. Now the question is even if the respondents contention is correct, whether there should have been a regular enquiry before terminating the services of the applicant. If the applicant had not been appointed at all, then the question of holding an enquiry or terminating his services, strictly speaking, would not arise at all. Hence we are not impressed by the argument of the learned counsel for the applicant that a charge sheet should have been issued and a regular departmental enquiry should have been held since the applicant had acquired temporary status. If the applicant had not been appointed and is found working illegally or fraudulently as an impostor in the place of Arvind Babubhai, the respondents are justified in saying that since he had no order of appointment the respondents need not hold any enquiry and simply asked him not to attend the office.

7. The learned counsel for the applicant invited our attention to some authorities.

In an unreported Division Bench Judgment of this Tribunal dt. 29.2.1996 in O.A. No.147/96 and connected cases (Dinesh Kumar Singh & Ors. V/s. Union of India & Ors.), it has been observed that before termination of service a departmental enquiry is necessary. In that case there was no dispute about the order of appointment, but the dispute was about obtaining the order of appointment on the basis of some forged documents. In that case there was no dispute regarding the appointment of the applicant, but the dispute was about the basis on which

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the appointment order was obtained. In those circumstances, it was observed that an enquiry should have been held according to law.

In 1996(1) S.C.S.L.J. (1) (Union of India & Ors. V/s. M.Bhaskaran), it was a case where the services of the applicant had been terminated by holding a regular enquiry, but still the Tribunal had interfered with that order of termination on the ground that there was no mis-conduct after appointment. The Supreme Court observed that obtaining an order of appointment on false material can be inquired into and since a regular enquiry has been held there is no reason to interfere with the order of termination. In that case whether regular enquiry was necessary or not did not arise for consideration since regular enquiry had already been held and the only dispute was whether the alleged act was a mis-conduct or not. Further, even in that case the question of appointment to the applicant was not in dispute, but the dispute was only regarding the basis of the appointment order.

In 1993 SCC (L&S) 723 (D.K.Yadav V/s. I.M.A. Industries Ltd.), it is observed that before the services were terminated, principles of natural justice should be followed and enquiry should be held. There is no dispute on this proposition of law.

8. Then the learned counsel for the applicant placed strong reliance on an unreported Judgment of the Bombay High Court dt. 17.2.1998 in Writ Petition No.468/98 (Irshad Ahmed V/s. Union of India & Ors.) in support of his contention that regular disciplinary enquiry has to be held. In that case, the dispute was whether the applicant

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had attained temporary status or not. On facts the High Court held that since the applicant had worked for more than four months, his case is covered by the disciplinary rules and no action can be taken without following the procedure of holding the enquiry etc. In that case there was no dispute about the appointment of the applicant. There is no dispute about the proposition of law that if a person has acquired temporary status after working for the minimum period mentioned in the rules, the person will be entitled to the benefit of disciplinary enquiry rules.

But in the present case, the very appointment of the applicant is in dispute. The mis-conduct alleged has nothing to do with the employment. Here the allegation is that the applicant is an impostor and he had started working in the place of another official by manipulating the appointment order. The question is whether in such a case a regular disciplinary enquiry is necessary or not.

9. As against this, the learned counsel for the respondents invited our attention to some ~~other~~ authorities.

In AIR 1994 SC 853 (S.P.Chengalvaraya Naidu V/s. Jagannath & Ors.), No doubt it is a civil case, but what is relevant is the observation that fraud-avoids all judicial acts. It is observed that a Judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Similarly, in the present case the contention of the respondents is that the very entry of the applicant into service is by fraudulent means by tampering the appointment order issued to another person. If fraud vitiates everything including a Judgment of a Court then there is no difficulty to hold that even the appointment order is vitiated by fraud and it is a nullity and has no existence in the eyes of law.

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In 1997(1) SLJ 118 (Pramod Lahudas Meshram V/s. State of Maharashtra & Ors.), some persons came to be appointed in service and after 9 months of service, their services came to be terminated. The contention before the Supreme Court was that principles of natural justice was not observed and no show cause notice was issued to the applicants, much less an enquiry. The Supreme Court rejected this argument and while doing so it is observed that the very letter of recommendation on the basis of which the appointment orders were issued was found to be a forged document or an unauthorised document and therefore, any appointment order issued on the basis of such an unauthorised letter of recommendation is illegal and liable to be quashed. That no illegality has been committed by the Administration in cancelling the appointment. What is more, the Supreme Court even directed the Government to refer the matter to the CBI for enquiry and to see that such malpractices should not go unpunished. Similarly, in the present case, on the face of it, the appointment order is manipulated and forged by inserting the name of the applicant by striking out the name of Arvind Babubhai, which is apparent to the naked eyes. No proof is necessary if in such a case where there is no appointment order in favour of the applicant and if he is still found working as an impostor. The respondents could very well ask him not to attend the office since there is no appointment order in his favour. Hence the action taken by the respondents cannot be faulted only on the law that no disciplinary enquiry is held.

The respondents counsel also relied on an unreported judgment of a Division Bench of this Tribunal

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dt. 29.10.1997 in O.A.778/96 & connected cases (Jaiprakash Yadav & Ors. V/s. Union of India & Ors.), there also it was found that the very appointment of the applicants was bad in law. It was a case where the order of the appointment is said to have been obtained on the basis of a forged document. The said Division Bench observed that in cases of this type, quashing the order of termination would revive illegal appointments, which cannot be permitted. Therefore, the Tribunal refused to interfere in the matter.

10. We have considered the rival contentions with all seriousness it deserves. No doubt there is some force in the contentions of the applicant's counsel that prima facie the oral order of termination is bad since it is not preceded by a show cause notice or a regular departmental enquiry. But we must bear in mind the peculiar facts and circumstances of this case where according to the respondents the applicant was never appointed to this job and no appointment order was issued to him, but since he was found working as an impostor or by impersonation in the place of another official by tampering with his appointment order, the respondents told him orally not to come to office from a particular day. In such a situation what is the role of this Tribunal? Should this Tribunal mechanically interfere with the order and direct the department to reinstate the applicant and pay back wages for all these six years and then if necessary hold a fresh enquiry according to law? After giving our anxious and serious consideration, we feel that this is not a fit case in which this Tribunal should exercise its discretion in interfering with the order of termination even if it is shown that it is not according to law. If we accept the

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argument of the learned counsel for the applicant and set aside the impugned order and direct the reinstatement and payment of backwages for six years, it would be restoring an illegal appointment, which is not the intention of the law. The judicial review given with this Tribunal has been held by many ~~physicians~~ decisions including the Supreme Court as akin to or similar to the jurisdiction exercised by the High Court under Article 226 of the Constitution of India. Even if an order is found to be illegal, the High Court or Tribunal may decline to exercise jurisdiction on the ground of delay and laches or on the ground of the applicant not coming to Court with clean hands. Another ground of not interfering with such an order, even if it is prima facie illegal, is when interference with an illegal appointment order is restored or some other inequitable situation occurs. We are fortified in our view by a decision of the Supreme Court and a decision of the Principal Bench of our Tribunal.

11. In AIR 1966 SC 828 (Gadde Venkateswara Rao V/s. Government of Andhra Pradesh and Ors.), the Supreme Court had considered the validity of an order of Government of Andhra Pradesh dt. 18.4.1963. The High Court had refused to quash that order and the matter came on appeal before the Supreme Court. The facts of the case are not relevant for our purpose. In para 16 of the reported Judgment, the Supreme Court noticed that the order of Government is bad since it was passed without giving an opportunity to the aggrieved party who is prejudicially affected by the said order. In other words, the order was bad for violating the principles of natural justice and it is the same argument which is pressed before us in the present case

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to challenge the order of termination. Even after having noted that the impugned order of the Government was bad since it was passed without hearing the affected party as observed in para 16 and 17 of the reported judgment, the Supreme Court posed a question in para 17 whether in these circumstances was the High Court justified in its discretion in not interfering with the impugned order? Then the Supreme Court observed as follows :

> "If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

Therefore, we see that even after having come to the conclusion that the Government order is bad for violation of principles of natural justice, the Supreme Court held that the High Court was right in not interfering with the order since the setting aside of the order would amount to restoring an illegal order.

Similarly, in the present case if we now set aside the order of termination and direct the applicant to be reinstated we would be restoring an illegal ~~possession~~ position viz. continuing the applicant in appointment though he had none and the one which was on record is manipulated and forged appointment order.

12. Then we come to a decision of the Principal Bench Bench in the case of Sanjiv Kumar Aggarwal and 3 Ors V/s. Union of India & Ors. reported at (1987(3)(SLJ) 353), which was decided by a Division Bench which consisted of the then Chairman of the CAT and another Member. There also, it was found that the applicants had obtained appointment by fraudulent means and the appointments came to be terminated. There also the contention was that the order of termination is bad for non-compliance with the principles

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of natural justice. After going through the facts of the case the Tribunal found that the appointment orders had been obtained by fraudulent means. It was therefore, held that no enquiry was necessary, since it was not a mis-conduct during employment, but it is something preceding the date of appointment. Then the Tribunal further held that even if the order of termination is bad, still it was not a case for interfering with the order of termination by exercising the discretionary jurisdiction of the Tribunal. For our present purpose, the following observations of the Division Bench at page 375 of the reported Judgment are very relevant :

> "Assuming that such termination order should have been preceded by an inquiry in accordance with the CCS(CCA) Rules (which, in our opinion, is not required) and such an inquiry not having been held, the orders of termination are bad, even then if the Tribunal finds that quashing these orders would result in reviving appointments which should never have been made, would not issue any writ, direction or order. Granting any relief to the applicants would amount to allowing them to abuse the process of court. The Tribunal, therefore, decline to grant any relief to the applicants. For the aforesaid reasons, the impugned orders do not call for interference. These applications therefore, fail and are accordingly dismissed, but in the circumstances, without costs."

13. We are also fortified in our view by a decision of the Chandigarh Bench of this Tribunal in the case of Brij Mohan & Ors. V/s. Union of India & Ors. (1995(1)ATJ 1), where also it is observed that in the case of an appointment based on forged/faked/fabricated selection panels no enquiry is necessary before terminating the services. In particular the said Bench has observed that no Courts or Tribunal can be taken assistance of with a view to perpetuate an illegality and thereby defeat the ends of justice. It is further observed at page 15 of the reported Judgment that the Tribunal would not be a party to encourage any act or omission which perpetuates a wrong.

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14. Since in this present case there is no order of appointment in favour of the applicant and since he has failed to produce his appointment order before this Court and the one order produced by the respondents show that it was issued in the name of Arvind Babubhai, but the name has been struck off and applicant's name is interpolated and the tampering of the name is apparent to the naked eyes. In such circumstances, if we now set aside the order of termination on a technical ground then we will have to direct the department to reinstate the applicant and paying back wages for the last six years which should be a very huge sum, would be like giving premium on dishonesty. The Courts and Tribunals are not meant to lend their support to such persons who come to Court whose conduct is blameworthy and who have not come to Court with clean hands. Hence taking into account the peculiar facts and circumstances of this case and the conduct of the applicant we find that it is not a fit case for this Tribunal to exercise its jurisdiction to set aside the termination order and reinstate the applicant. We therefore, decline to exercise jurisdiction in favour of the applicant. He does not deserve any equity at the hands of this Tribunal.

15. In the result, the O.A. fails and is dismissed. In the circumstances of the case there will be no order as to costs.

(P.P.SRIVASTAVA)
MEMBER(A)

7-4-94
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.