

Central Administrative Tribunal
Mumbai Bench

O.A.209/1997

Mumbai this the 11th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri B.N. Bahadur, Member(A).

John Mathew,
Ex. Sr. Clerk, MTP (R),
Jui Nagar, residing at
Railway Quarter No. 1/24/2,
Dahisar (E), Mumbai-400 068. Applicant.

(By Advocate Shri C.M. Jha)

Versus

1. Union of India, through
General Manager, C. Railway,
M.T.P. (Project),
M.T.P. Railway, Chhatrapati,
Shivaji Terminus, Mumbai-400 001.
2. Executive Engineer (C),
Jui Nagar, Dy. Chief
Engineer's office, Station
Building, Jui Nagar, New Bombay.... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has impugned the penalty order passed by the disciplinary authority dated 27.3.1996 removing him from service against which the appeal submitted by him has also been dismissed by the appellate authority by his order dated 22.10.1996.

2. The brief facts of the case are that the applicant states that he was appointed as Junior Clerk in the grade of Rs.950-1500 by the respondents/CPO - Bombay VT and

Y.S.

posted to work under the Executive Engineer (C), Mankhurd. He has stated that he had been declared medically fit in category C-2 by the DMO, Central Railway by Medical Certificate dated 28.6.1989. Office Order No. 39 of 1989 dated 5.7.1989 which learned counsel for the applicant submits is a posting order and not the appointment order of the applicant, is placed at page 19 of the paper book. Learned counsel for the applicant has submitted that the applicant does not have the copy of the appointment order but he has been correctly appointed and posted by order dated 5.7.1989 by the CPO-Bombay VT. Thereafter, the applicant has been promoted as Senior Clerk on 14.8.1991. He was suspended by order dated 13.7.1994. The charge-sheet was issued to him by Memo dated 2.1.1995 under Rule 4 of the Railway Servants (Discipline and Appeal) Rules, 1968. The article of charge framed against the applicant was that he had obtained appointment in Railway as Junior Clerk on forged and bogus documents by paying bribe. It was, therefore, stated that he had "failed to maintain absolute integrity and behaved like unbecoming of a Railway servant and thereby contravened Rules 3(i) and (ii) of the Railway Service (Conduct) Rules, 1966. Learned counsel has submitted that the Departmental inquiry held against the applicant was not fair or legal or in accordance with the relevant Rules.

18/

3. A number of grounds have been taken in the O.A. to assail the penalty orders imposed on the applicant which are set out in paragraph 5. In the statement of imputation in support of the article of charge, it has been stated that the applicant in collaboration of Shri K. Rajiah, the then APO/MTP (R), Churchgate obtained forged call letter for appointment bearing No. MT/E/014/V dated 1.6.1989 which had been signed by somebody for Chief Administrative Officer without any seal and stamp of office wherefrom it was issued. Shri C.J. Jha, learned counsel has contended that the respondents have failed to produce Shri K. Rajiah as a witness. However, during the course of hearing, it was not the case of the applicant that he had made any request to the Inquiry Officer or the disciplinary authority that this person should be produced as a witness or that he would like to call him as a defence witness.

4. Another main ground taken by the learned counsel for the applicant was that the respondents have stated in the statement of imputation of misconduct against the applicant, inter alia, that there was no such Office Order as Office Order No. 39/1989 available in the Service Record (SR). It has also been stated that entries in the SR had been attested by one Shri J.B. Vani, AEN/MTP for CAO(C) who was not authorised to do so. Learned counsel

8

has contended that such irregularities committed by an officer of the Department should not be held against the applicant because the applicant was not known whether Shri J.B. Vani, AEN/MTP was or was not authorised to attest the entries in the SR. He has also contended that Shri Vani was also not called as a witness and, therefore, in the absence of S/Shri K. Rajiah and J.B. Vani, the disciplinary proceedings are vitiated.

5. Another ground taken by the learned counsel for the applicant is that in the reference made to the Railway Recruitment Board (RRB) by the respondents/ Vigilance vide their letter dated 8.6.1994, they have not given sufficient materials and the details pertaining to the applicant on the question whether he had been selected by them for the post of Junior Clerk in 1989. Therefore, he states that the reply given by RRB/BCT to this letter dated 8.6.1994, cannot be relied upon, Apart from the fact that no officer from RRB had been produced in the DE proceedings to verify the records and the letter or shown to him. In this connection, learned counsel has very vehemently contended that the entire records of the RRB for the examination in question showing the names of all the selected candidates should have been produced in the disciplinary proceedings against the applicant and only the RRB letter dated

8.6.1994 that the applicant had not been selected would not be of any value. In the circumstances, learned counsel has contended that the proper procedure has not been followed by the respondents in conducting the disciplinary inquiry while passing an extreme penalty of removal from service.

6. Another argument advanced by the learned counsel for the applicant is that the appellate authority's order dated 22.10.1996 is not a speaking order and shows non-application of mind. He has contended that even the disciplinary authority's order suffers from the same infirmity that it is a non-speaking order. He has also submitted that the conclusion of the disciplinary authority in his order that the charged employee himself had admitted that though he appeared for the written examination conducted by the RRB for the post of Junior Clerk, he did not receive any intimation from RRB neither for interview nor for the selection to the post, is not correct as there is no such admission. His contention is that if he had admitted the same, there would have been no need to conduct the Departmental inquiry. He has also referred to the various questions and answers in the proceedings in the preliminary inquiry and the Departmental inquiry and has contended that to substantiate his plea, there is no material to find the applicant guilty of the charges or the

procedure laid down under the Rules have been followed or the applicant given reasonable opportunity to defend his case. In the circumstances, Shri C.J. Jha, learned counsel has prayed that the impugned orders may be quashed and set aside with all consequential benefits.

7. The respondents in their reply have controverted the above submissions and we have also heard Shri V.S. Masurkar, learned counsel. Learned counsl has submitted the relevant records pertaining to this case, including the Depeartmental inquiry proceedings file. Learned counsel has submitted that in the O.A., unlike the usual practice, the applicant has merely stated that he was appointed as Junior Clerk and posted to work under the Executive Engineer (C) by Office Order No. 39 of 1989 dated 5.7.1989. He has submitted that it is significant to note that the applicant has neither given particulars of the advertisement or Notification issued by the respondents or the RRB or the details when he had appeared for the written test/interview and when the results were declared pertaining to the examination in question. Learned counsel has contended that the applicant in his answer in the Departmental proceedings held on 20.10.1995, has stated that he has received all ~~the~~ reasonable facilities and opportunities to defend his case. This was in answer to the question whether he has received all reasonable

facilities and opportunities to defend his case. Learned counsel for the respondents has, therefore, submitted that having said so before the Inquiry Officer during the Departmental proceedings, it is not open to the applicant to now contend otherwise. He has also submitted that PW-2 has stated in the inquiry proceedings that the applicant's name was not in the selected candidates list available in the RRB's office and the same was confirmed by Vigilance Branch vide their letter dated 31.5.1994. Accordingly, the RRB officials had clearly confirmed vide their letter dated 8.6.1994 that none of the candidates listed in the list of Vigilance Branch letter dated 31.5.1994 have been recommended for appointment on Central Railway by RRB/BCT. Learned counsel has, therefore, submitted that in the Departmental proceedings, it has been proved that the applicant has been appointed on forged and bogus documents which he had not received from the competent authority. He has referred to the letter dated 1.6.1989 and has submitted from the record with the respondents that this was a forged document which was signed by ~~them~~ ^{a person} without any seal and stamp of the office from where it has been issued. The copy of this document has been annexed as Annexure R-3 in which the learned counsel has submitted that even the name of the officer who has signed it, is not indicated. He has relied on the judgement of the Supreme Court in Union of

India and Ors. Vs. M. Bhaskaran (1996 (1) SC SLJ P-1) and other cases mentioned in the counter affidavit. In the circumstances, learned counsel has submitted that the applicant cannot derive any benefit from the forged documents for appointment and the O.A. may be dismissed.

8. We have seen the rejoinder filed by the applicant and have also heard Shri C.J. Jha, learned counsel in reply. The applicant has more or less reiterated his submissions in the O.A. Learned counsel has submitted that there was ~~been~~ no proof of the applicant having paid any money by way of bribe to Shri K. Rajiah, the then APO/MTP (R) who had taken the interview, on the result of which the applicant had been appointed. He has, therefore, contended that the applicant cannot be penalised for the mistake of the respondents.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties as well as the records submitted by the learned counsel for the respondents.

10. Learned counsel for the applicant has very vehemently contended that Office Order No. 39 of 1989 dated 5.7.1989 is only the posting order issued by Shri K. Rajiah for

Chief Engineer (C), posting him and K.C. Staff - Clerical Cadre. However, in this order, it is mentioned that the applicant who was a candidate selected by RRB, Bombay for appointment as Jr. Clerk in the grade of Rs.950-1500 and having been declared medically fit, is being posted against the existing vacancy of Junior Clerk in Engineering Department, under KED (C) w.e.f. 29.6.1989. The article of charge against the applicant is that he had obtained appointment in Railway on forged and bogus documents by paying bribe. The disciplinary authority in his order has come to the conclusion on the facts and circumstances of the case that the applicant was not selected by RRB for the post of Junior Clerk. From the letter issued by the RRB dated 8.6.1994 in reply to the letter issued by the Vigilance Branch seeking certain information from the RRB, they have stated that from the records available in their office which has been checked, none of the 12 candidates, including the applicant whose name is given at Serial No. 12 of the list, was recommended for appointment on the Central Railway by the Board. The contention of Shri C.J. Jha, learned counsel that the Vigilance Branch had not asked the RRB in specific terms and sufficient details were not furnished to that office to enable them to check their records with regard to the applicant's selection in the examination held by them, following the Employment notice

issued in 1989, cannot be accepted. The facts and issues raised in this O.A. are similar to the facts raised in another O.A. 1514/2001, Latoor Singh Vs. The Commissioner of Police and Anr. (Principal Bench), in which one of us (Smt. Lakshmi Swaminathan was a Member), copy placed on record. This was also mentioned to the learned counsel for the parties during the hearing. In the circumstances of the case, the judgement in Latoor Singh's case (supra) is fully applicable to the facts in the present case. There is, therefore, no infirmity in the action taken by the respondents in relying upon the letter from RRB dated 8.6.1994 which is in reply to the specific queries raised by the respondents as to whether the applicant along with 11 others have appeared and have qualified in the selections held by the Board. The answer from the RRB is in the negative. As submitted by the learned counsel for the respondents, it is also relevant to note that the applicant has not referred to the selection letter issued to him by the RRB and its absence clearly points to the fact that he has not been selected through RRB at all. As far as Shri K. Rajiah, the then APO/MTP (R) who had taken the interview based on the result of which the applicant had been appointed as junior clerk, the respondents have clearly stated that this official was not competent to conduct the interview. Besides, since the applicant states that he had applied for selection as Junior Clerk to the RRB, his further contention that he was

11:

not aware that Shri K. Rajiah was not the competent authority who had interviewed him, will not be sufficient to show that the appointment has been done in accordance with the relevant Rules. The judgement of the Hon'ble Supreme Court in M. Bhaskaran's case (supra) is also fully applicable to the facts in this case. The applicant cannot, therefore, claim a benefit arising out of such fraudulent actions. The charge against the applicant was that he had obtained appointment in Railway as Junior Clerk on forged and bogus documents by paying bribe. In the circumstances of the case, the contention of the learned counsel for the applicant that as the later part of the charge of paying bribe has not been proved, therefore, the whole inquiry proceedings should be quashed and set aside cannot be agreed to, in the light of the RRB's letter dated 8.6.1994 which clearly shows that the applicant has not been selected for the post of Junior Clerk by the competent authority and could not then get the appointment. He had, however, been appointed as Junior Clerk based on certain other documents which cannot accordingly be held to be either legal or genuine. In the circumstances of the case, following the judgements of the Supreme Court in M. Bhaskaran's case (supra) and the Tribunal in Latoor Singh's case (supra) which are applicable to the facts of this case, the O.A. is liable to be dismissed.

12. Having seen the Departmental Enquiry proceedings file, we are unable to agree with the applicant's contentions that the proper procedure as laid

V2

down under the Rules has not been followed or that he has not been given a reasonable opportunity to defend his case. He has himself not called the witnesses and the contentions to the contrary are an after-thought and no prejudice has been shown. Besides, the charge that he has been appointed as Junior Clerk in Railways on forged and bogus documents has been proved in the enquiry proceedings and the applicant cannot derive any benefit from it. His contentions that the disciplinary authority's order and the appellate authority's order show non-application of mind and are non-speaking orders are also baseless. A perusal of these orders shows that the competent authorities have applied their mind to the evidence brought on record before them, to come to the conclusion that the applicant's appointment in the Railways as Junior Clerk is fraudulent and is based on forged and bogus documents as he was never selected or recommended by the RRB for this post. In the circumstances of the case, the imposition of the penalty of removal from service can neither be considered as too harsh or illegal to justify any interference in the matter. The fact that part of the charge of paying bribe has not been proved will not assist the applicant as his initial appointment is itself fraudulent. We do not also find any merit in the other arguments of the learned counsel for the applicant warranting setting aside the removal order which has been imposed on the applicant on justifiable grounds.

BZ

13. In the result, for the reasons given above, the O.A. is devoid of merits and fails. Accordingly, the application is dismissed. No order as to costs.

B.N. Bahadur

(B.N. Bahadur)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'