

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 908/97

Date of Decision : 12.6.2002

D.K.Patil _____ Applicant

Shri C.M.Jha _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri Suresh Kumar _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library


(B.N.BAHADUR)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.908/97

Wednesday this the 12th day of June, 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Dinkar K.Patil,
R/at Rly.Qr.No.MS/RB/I/113/14,
Railway Colony,
Kurla (E),
Mumbai.

...Applicant

By Advocate Shri C.M.Jha

vs.

1. Union of India
through General Manager,
(MTP-Project),
Central Railway,
C.S.T., Mumbai.

2. Executive Engineer (C),
HQs Office,
Metropolitan Transport Project,
Churchgate,
Mumbai.

3. Deputy Chief Engineer,
HQ MTP,
Churchgate,
Mumbai.

...Respondents

By Advocate Shri Suresh Kumar

..2/-

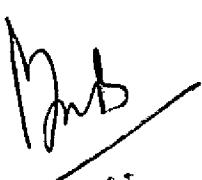


O R D E R (ORAL)

{Per : Shri B.N.Bahadur, Member (A)}

The Applicant in this case has come up to the Tribunal against the order of his removal from service dated 27.3.1996 (OA.page 15) as also against the order of the Appellate Authority confirming the aforesaid order letter being dated 5.8.1996 (OA.page 19). The facts brought out by Applicant and argued on his behalf by Learned Counsel Shri Jha are that he was appointed as Junior Clerk in Grade Rs.950-1500 by the Chief Claim Officer, Bombay CST and posted to work under Executive Engineer(C) Mankhurd after having been declared medically fit in Category 'C-II'. The copy of the medical certificate dated 30.6.1989 annexed at Exhibit'D'. The applicant has also annexed copy of Office Order dated 7.6.1990 (Exhibit-'C') which is stated to be a posting order. The Applicant states that he worked hard and with integrity until he was removed vide order dated 27.3.1996 after an enquiry under Rule 9 of Railway Servants (Discipline and Appeal) Rules,1968.

2. The Respondents have filed a written statement of reply. The main point made is that on the basis of preliminary check/vigilance investigation, Central Railway, it was revealed that he has never been legally appointed in the Central Railway. It is further stated that Railway Recruitment Board has also confirmed that Applicant had never been recommended/selected by R.R.B.Mumbai Central. In view of this, he was suspended and issued with a major penalty chargesheet after which the aforesaid penalty of removal from service has been imposed on him. In the other part of the reply statement, the Respondents describes the details of the case, and have provided parawise replies to the applicant's averments in the OA.



3. The Learned Counsel for the Applicant, apart from depending on the grounds taken in the OA, also sought to make the point that the Applicant had indeed been appointed and the medical test certificate as Annexure-'D' shows that he had gone through the regular procedure of appointment. It is interesting to note that the medical certificate of physical fitness is dated 30.6.1989 on which date the Applicant had also joined the service.

4. The Learned Counsel for Applicant also took up the grounds that the enquiry process suffered from legal and procedural flaws and that even the orders of the Appellate Authority were not speaking orders and were cryptic. In regard to Disciplinary Authority's order, it was argued that the preliminary enquiry report was depended upon, and that this was wrong, in terms of the law settled by the Hon'ble Supreme Court. Also a personal hearing, which was asked for, and which had to be provided as required by rules, was not provided to the applicant. Similarly, the authors of the letters to and from R.R.B. were not called for as witnesses.

5. The Learned Counsel for the Respondents, Shri Suresh Kumar, depended on the written statement, and argued that this was a case where the appointment was obtained by fraud and in view of this, there could be no right for the applicant in even challenging the enquiry. He also argued that, in any case, the Departmental Enquiry had been carried out validly, and as per prescribed procedure, and that there was no legal or other lacuna in the process of enquiry or the orders of either the Disciplinary Authority or the Appellate Authority.

Amrit

6. We may recall that we have recently an occasion to dispose of a similar matter through an order dated 6.5.2002 in OA.No.873/97 (Ravindra Babu Bagul vs. Union of India & Ors.). The Respondents therein was the same as in the present OA. Interestingly, we find very similar over-tones in the lines of arguments. We had, during the course of argument in present OA., asked the Learned Counsel for the Applicant if he could produce any proper letter of appointment or offer of appointment or any document to show that he even appeared for the examination. No such document was available. In the facts and circumstances obtaining in the case, we can hardly depend on the two Exhibits filed, and drawn support from viz. the alleged "posting order" or the "Medical certificate".

7. Also once we come to the conclusion that the very appointment was obtained by the Applicant on the basis of false documents and fraud, the Applicant will not be entitled to claim any benefits of faulty procedure etc. The reasons for our arriving on the above conclusion and specially the guidance available in this regard from the Hon'ble Supreme Court is discussed at length in our judgement and order in the aforesaid case of Ravindra Babu Bagul. We do not find it necessary to repeat these here. Suffice to state that this is a case which does not deserve any interference. The OA., therefore, deserves to be dismissed and is accordingly dismissed. No order as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

B.N.BAHADUR
(B.N.BAHADUR)
MEMBER (A)