

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 574 / 1998

Date of Decision: 28.6.02

Narendra Pandurang Chaudhari
Applicant.

Shri A. M. Nerkar
Advocate for
Applicant.

Versus

Union of India & ors.
Respondent(s)

Shri V S. Masurkar
Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. Shanker Raju - Member (J)

- (1) To be referred to the Reporter or not? Yes.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X

S. Raju
(Shanker Raju)
Member (J).

Central Administrative Tribunal
Mumbai Bench

OA No.574/1998

Mumbai this the 28th day of June, 2002.

Hon'ble Mr. B.N. Bahadur, Member (Admnv)

Hon'ble M. Shanker Raju, Member (Judl.)

Shri Narendra Pandurang Chaudhari,
working as a Junior Clerk in the
Electric Locomotive Workshop,
Central Railway,
Bhusawal and residing at
Post Khirodo, Taluka Rawer,
Distt. Jalgaon.

-Applicant

By Advocate Shri L.M. Nerlekar)

-Versus

1. Union of India through
the General Manager,
Central Railway, CST, Mumbai.
2. Senior Electrical Engineer,
Electric Locomotives Workshop,
Central Railway, Bhusawal.
3. Chief Workshop Manager,
Electric Locomotives Workshop,
Central Railway, Bhusawal.
4. Chief Electrical Loco Engineer,
GM's Office, CST, Mumbai

-Respondents

By Advocate Shri V.S. Masurkar)

O R D E R

Mr. Shanker Raju, Member (J)

The applicant an ex Junior Clerk impugns respondents' order dated 14.7.1997 imposing the punishment of removal from service as well as appellate order dated 22.11.1992 upholding the punishment and also Revisional Order dated 4.6.1998. The applicant has sought reinstatement with all consequential benefits.

2. Applicant in pursuance of Notification of Railway Recruitment Board applied in 1989 and was issued an Attendance

Roll No.412094 as well as Interview No.0126. Subsequently, during the Vigilance investigation a letter has been sent to the Railway Recruitment Board on 31.5.1994 sending information as to selection of the applicant as well as eleven others. By a reply dated 8.6.1994 by the Railway Recruitment Board, it has been advised that none of the candidates including the Applicant has been recommended for appointment in the Central Railway by the Board.

3. Applicant on 13.5.1994 was examined by the Vigilance. He made a statement stating that he appeared in the examination for NTPC category notified by the Railway Recruitment Board, the result of which was never communicated to him but somehow he met one SPO (PR) who asked him to give money as the applicant had already written examination of NTPC. A payment of Rs.16,000/- was admitted to be made by the applicant and he was called for medical examination on 3.1.1991, and handed over a medical memo. The applicant was declared medically fit and was given a medical certificate on 5.11.1991. Thereafter the appointment letter dated 27.12.1991 was also given to him thereupon he paid the amount of Rs.16,000/- to the applicant.

4. On the basis of the aforesaid Investigation Memorandum under SF-5 was served upon the applicant for the allegations of obtaining appointment in the Railways as Junior Clerk through a bogus document by paying bribe. In support of the case few documents have been annexed which interalia included the Railway Board letter, statement of the applicant, vigilance report and one witness Shri S.S.Gawle was to substantiate the charge.

5. Enquiry proceeded and the Enquiry Officer through his report dated 30.9.1996 in view of the evidence to substantiate the charge held the applicant guilty of the charge.

6. Applicant preferred a representation against the finding which culminated into a penalty of removal.

7. Applicant preferred appeal as well as revision petition which was rejected upholding the punishment.

8. The learned counsel for the applicant Shri Nerlekar propounded that the following legal pleas for reconsideration while assailing the impugned orders.

✓ (a) By placing reliance on a decision of the Apex Court in the case of Swami Singh Vs. State of Rajasthan, AIR 1986 SC 995 It is stated that if the charge levelled against the delinquent is vague, lacks in material particulars, the order deprives reasonable opportunity to the Government servant. In this backdrop it is stated that the charge against the applicant in the Memorandum is vague and indefinite inasmuch as the person to whom the bribe is given and his name has not been mentioned with the result he has been deprived of the opportunity to represent the same.

✓ (b) It is stated that in pursuance of the handwriting experts report it has been established that the certificate of letter of appointment issued by Shri C.S.Khadilkar was signed by him and non-examination of this witness has prejudiced him and deprived him for a reasonable opportunity to prove his innocence by effective cross-examination of the witnesses. It is stated that the non-examination of handwriting expert whereas the report has been proved is contrary to the decision of the Tribunal in Rajinder Prasad Vs. Union of India & others, (1994) 26 ATC 698.

The applicant further stated that during the course of enquiry he has requested the disciplinary authority to change the Enquiry Officer on the ground of his bias which was apparent on the ground that he had put leading questions to the prosecution witnesses though the applicant had no proper notice of the enquiry on 3.6.1996. The same was proceeded ex parte by recording the absence of the applicant. The date of enquiry informed to the applicant was 31.8.1996 whereas the enquiry was held on 30.8.1996, denial of the examination of Shri Khadilkar being short and his statement as confidential record is not sustainable.

9. Placing reliance on a decision in the cases of Smt. Indrani Bai Vs. Union of India & others, 1994 (2) ATJ 382 as well as in Rattanlal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others, 1993 SCC (L&S) 1106 it is contended that if a request to change the Enquiry Officer is made by a delinquent officer in consonance of the principles of natural justice and fair play the same should be acceded to to avoid any apprehension of bias by the delinquent official. It is stated that the findings of the Enquiry Officer is perverse and bias. The statement of Shri Gawle was accepted without according any reasons. No cogent reasons have been given in the findings as to why the fraud has been established.

10. Lastly it has been contended that even in a case of appointment by alleged fraud and fabrication, the same is to be proved in accordance with law as the appointment letter has been proved to be issued by Shri Khadilkar, the officers of the respondents and the fact that the applicant has participated in the recruitment, the appointment was valid and as the allegation

of bribe and fraud have not been established through any evidence, the approval of guilt against the applicant is founded on suspicion and surmises and conclusion is arbitrary. It is also contended that the punishment is highly excessive and is disproportionate to the charge.

11. The respondents counsel Shri Masurkar registered the defence with the contentions of the applicant and by taking us to Annexures (Pages 26 of the OA). It is stated that the appointment letter is dated 16.10.1991 which has been made subject to medical examination whereas the applicant at pages 29 to 231 has annexed the medical record to indicate that he was medically examined on 29.2.1991 and the medical report was given on 5.3.1991 which disbelieves the case of the applicant that medical examination cannot be done in advance to the appointment and as such appointment itself is fraud and bogus. The learned counsel has further relied on a decision of the apex Court in Union of India & others Vs. M.Bhaskaran, 1996 (1) SC SLJ 1 to contend that where an appointment has been sought on a forged and bogus document mere continuity on a post for number of years does not create equity or right in favour of the employee and once enquiry is held in accordance with law and rules, the same would not be interfered with in any manner whatsoever.

12. Further placing reliance on a co-ordinate Bench decision in OA 873/97 decided on 6.5.2002 wherein a similar controversy was raised, the Tribunal relying on the decision of Bhaskaran's case (supra) and the case of Sanjiv Kumar Aggarwal and 3 ors. Vs. Union of India & others, 1987 (3) CAT AISLJ 353 concluded that (appointment has been by fraudulent means can be legitimately treated as voidable at the option of the employer. Certain flaws

which have crept up in the enquiry shall be overlooked as the basic principles of natural justice had been more than followed and the applicant cannot be held behind technicalities of proving of evidence in Service Law where the entire action of joining service is itself an imposter. No interference was made and the OA was dismissed.

12. It is further stated that the enquiry has been held in accordance with the rules and procedure laid down. The applicant has been afforded reasonable opportunity during the course of the enquiry. His request for change of Enquiry Officer was but rejected and as there was only one prosecution witness the statement of the applicant was recorded and the enquiry was concluded on 30.8.1996. Applicant was informed of this date in advance but yet despite receiving the communication on 23.8.1996, he has not appeared in the enquiry.

13. The Disciplinary authority, Appellate authority as well as the Revisional Authority applied their mind to the contention of the applicant by passing a detailed and speaking order.

14. Applicant has also admitted the fact of claiming bribe and getting an employment on a bogus letter in the Vigilance which is admitted and has not been adjudicated upon during the course of the enquiry. As Shri Khadilkar was also an accused and delinquent in another enquiry, the demand of the applicant for expert opinion and vide letter dated 14.11.1995, the office of the CPO ruled issuance of the letter from their office. The request was dropped by the ARE of the applicant but the copy of the expert opinion was served upon which has not occasioned any miscarriage of justice or prejudice to the applicant.

Non-examination of Shri Khakilkar was on the ground of confidential letter as this could have prejudiced the enquiry against him. Applicant had not reiterated his request for defence witness on 26.4.96. The enquiry officer has with impartial mind conducted the enquiry and the applicant though not furnished the prosecution witnesses but somehow the respondents concluded the process and issued notices to them. One Shri Rajiah turned up but as the applicant was absent his statement was not recorded and the enquiry was conducted ex parte which does not suffer from any infirmity. Learned counsel as a last submission contended that in a judicial review the Tribunal has no jurisdiction to reappraise the evidence or to go into the quantum of sufficiency of evidence and to come to a different conclusion. For this he relies upon the following decisions:

- i) State Bank of Patiala & Ors. v. S.K. Sharma, AIR 1996 SC 1669.
- ii) Chandigarh Admn. & Anr. v. Jagjit Singh & Anr, JT 1995 (1) 445.
- iii) The Deputy Inspector General of Police Vs. K.S. Swaminathan, 1997 (1) ATJ 378.

It is however submitted that on a wrong appointment which is void ab initio no benefit can be drawn by the applicant.

We have heard the learned counsel on both sides and perused the material on record.

15. Undisputedly the applicant has failed to establish or to demonstrate before us that in pursuance of his participation in the Railway Recruitment Board Selection he was declared

enquiry from the Railway Board, their specific answer to the respondents on 8.6.1994 was that the applicant has not been recommended for appointment. No inference other than that the recommended for appointment. No inference other than that the appointment letter has not been issued by respondents and is bogus and fraudulent can be taken. Furthermore the office from where the aforesaid appointment letter has been issued from a letter dated 8.7.1994 by stating that as no posting is mentioned in the letter of appointment and it pertains to posting of D'man and signed by Hari Om APO as well as pertains to ministerial staff, the same has not been issued from the office, certainly establishes the element of fraud and authenticity of the documents as bogus. This conclusion is also verified which inevitably persuades us to take a view that the appointment letter was bogus which does not create any vested or indefeasible right in the applicant to continue in service as forthcoming as the appointment letter is dated 16.10.1991; whether the applicant was appointed/selected as Junior Clerk and his appointment was subject to medical examination. It is unheard of in service jurisprudence that no candidate is medically examined earlier to issuance of appointment letter. This has exactly happened in the case. The applicant was medically examined and the report was given on 5.3.91 whereas the appointment letter was issued on 16.10.91 clearly belied the contention of the applicant that he was selected in the examination and the appointment was served upon him by the respondents in pursuance of his getting through and recommended by the RRB. This evidence is sufficient to take a view that appointment of the applicant as alleged by the respondents has been obtained on fraud and bogus documents. This appointment letter has not sanctity in the eye of law.

16. Whereas in the enquiry the applicant rather stressing upon the factual matrix and the position existed as to his appointment rather persuaded us to go into the technicalities and irregularities in the procedure, as held by the Apex Court in Managing Director, ECIL v. B. Karunakar, AIR 1993 (6) 1669 which has been reiterated in S.K. Sharma's case (supra) that if violation of procedural provision of mandatory character inasmuch as prejudice has not been shown the enquiry is not vitiated.

17. If one has regard to the aforesaid ratio we proceed to examine the case of the applicant in the light of the decision of the Apex Court in the case of Bhaskaran (supra), wherein appointment was obtained on bogus and forged documents. Thereafter the enquiry entailed the punishment of removal which was not interfered by the Apex Court on the ground that if fraud is detected the appointment orders themselves are found to be tainted by fraud and by malice and the appointment is voidable on the option of the employer concerned. If such appointment is done away after holding an enquiry in consonance with the principles of natural justice the same would not defend the right of the delinquent only because he continued in service for a number of years. The aforesaid conclusion was followed in a coordinate Bench decision in OA-873/97 in Ravindra Babulal Bagul v. Union of India, decided on 6.5.2002, wherein though several irregularities have been pointed out and flaws demonstrated in the course of the enquiry what has been observed that the basic principles of natural justice have been more than followed and mere technicalities and the rights accruing therein cannot be made to a person who has no right to remain in service and appointment has not been validly made.

18. In the light of the aforesaid conclusions arrived at and law of the land we proceed to adjudicate upon the illegalities pointed out to us by the learned counsel.

19. In so far as the charge of vagueness is concerned, we have perused the memorandum issued to the applicant wherein he is alleged to have obtained appointment on the basis of forged and bogus documents by paying bribe. This has been clearly demonstrated in the imputations by definite and specific allegations alleged against the applicant. Moreover, in view of his own preliminary statement made to the vigilance which has not been objected to by him, during the course of the enquiry and has been proved to be voluntarily made the same is admissible in the eye of law and can be safely relied upon to hold the applicant guilty. This contention that the charge is vague does not hold any water and is accordingly rejected.

20. The contention of the applicant that although he had made a request to the authorities to change the EO but the same has not been acceded to and has resorted to a decision of the Apex Court would not be of any avail to him as the enquiry has been proceeded in accordance with law merely because certain lackness is alleged by him has been left out by the EO would not establish that he was biased. The report of the EO has been derived from the material adduced in the course of the enquiry and more particularly when the fraud of appointment letter was very much apparent on the face of it, although the applicant has made the request to change the EO but the disciplinary authority rightly rejected the same as not reasonable. Applicant despite afforded several opportunities to participate in the enquiry has not cross examined the witnesses and also not furnished the correct

addresses of the defence witnesses but witnesses have been called and notice for the day for enquiry was already served upon him. Despite this he has not responded to it and was not present in the enquiry. There was also no request from the delinquent applicant to postpone the enquiry as such and as per the rules the enquiry was unnecessarily delayed so it was proceeded ex parte after giving reasonable opportunity to the applicant. In this view of the matter the contention of the applicant as to bias of the EO is only an apprehension in his mind and is not well founded and was rightly rejected. We cannot interfere with the same.

21. In so far as the contention that the examination of hand writing expert was not made by calling him as a witness and Sh. Khadilkar was not called as a witness, we do not find any prejudice caused to applicant on account of the procedure adopted. Handwriting expert report is very much admissible where his findings have been given which was served upon the applicant and we do not think that by calling him and subjecting him to cross examination by the applicant would make any difference. As this this is not in dispute that the appointment letter has not been issued from the office of Shri Khadilkar and the only presumption which could be taken in such circumstances is that the appointment letter is not issued by the office of the respondents and is certainly a bogus document procured by the applicant through any means and in the instant case this is admitted that after appointment Rs.16,000/- have been paid by the applicant. In view of the specific stand of the Railway^{Rect.} Board that they have not recommended the case of the applicant and it

has been established that in a selection process he has not been qualified and a candidate who is not recommended by the RRB has no right to be appointed to a post.

22. Merely because the name and person to whom the bribe has been given has not been mentioned, has not at all prejudiced the applicant as he himself has admitted in the preliminary enquiry which has not been disputed by him, to have paid Rs.16,000/-. The rest of the contentions are immaterial.

23. In our considered view if a Government servant who has no indefeasible or vested right to be appointed gets an appointment from back door adopted deceitful means on the basis of forged and fabricated documents the same should be treated as void ab initio and such a person has no right to appointment in Govt. service, even if there is some technical flaws in the enquiry. The subsequent examination and the proof of getting appointment without qualifying the examination have been proved conclusively would not confer upon him any right to continue further merely because he was in service for two to four years in the department. There are more deserving candidates who on their merit qualify their selection and are awaiting appointments their legitimate rights are jeopardised by such persons by getting appointments on the basis of forged and bogus documents.

24. In the result and having regard to the reasons recorded above, as the applicants has failed to prove a prima facie case for our interference the OA is found bereft of merit and is accordingly dismissed, but without any order as to costs.

S. Raju

(Shanker Raju)
Member (J)

B.N. Bahadur

(B.N. Bahadur)
Member (A)