

51

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

..

D.A.No. 363 of 1989.

Between:

A. Joseph Chennaiah, .. Applicant.

Vs.

1. Production Engineer, Wagon Workshops,
Guntupalli, Krishna District.
2. Deputy Chief Mechanical Engineer,
Wagon Workshops, Guntupalli,
Krishna District.
3. Chief Workshops Engineer, S.C.Railway,
Rail Nilayam, Secunderabad.
4. Chief Personnel Officer, S.C.Railway,
Rail Nilayam, Secunderabad.
5. Govt. of India represented by its
Secretary, Ministry of Railways, Respondents.
New Delhi.

Sri V.Rama Rao, Counsel for the Applicant.

Sri N.R.Devvaraj, Standing counsel for the Railways.

CORAM:

Hon'ble Sri J.Narasimhamurty, Member (Judicial)

Hon'ble Sri R.Balasubramanian, Member (Administrative).

Judgment of the Bench delivered by
Hon'ble Sri J.Narasimhamurty,
Member (Judicial).

--:-

This Application is filed for quashing the
impugned order of dismissal dated 28--6--1988 and
Proceedings No.GR/P/227/BS/11628/86/Vig. dated 9-8-1988
confirming the order of dismissal and the proceedings
No.P.90/RYPs/AJC/1059 dated 20-1-1989 ~~xxxxxxx~~ of the
4th respondent and to direct the respondents to
reinstate the applicant with all consequential benefits.

The facts of the case briefly are as follows:

The applicant was appointed as Khalasi on 16--11--1951 at Hubli, South Central Railway and was promoted to the post of Blacksmith (skilled) subsequently. In the year, 1976 he was transferred to Wagon Workshop, Guntupalli.

While the applicant was working at Hubli he met with an accident in the night shift on duty and received an injury which resulted trouble in his vision. During the year 1978 he suffered severe pain and trouble in the right eye and subsequently his vision was diminished and for the said reason he was placed on sick list on several occasions. The Authorities directed the applicant to appear for medical check up and the Medical Authorities declared the applicant as unfit for all classes of service. Consequently he was discharged from service.

As there was no earning member in his family the applicant submitted a representation to the Authorities to appoint his daughter Kumari Marthamma in a suitable vacancy and the authorities considered his application and appointed his daughter as Office Clerk in the month of July, 1978.

Later the applicant consulted an eye specialist at Guntur and after successful treatment his eye trouble was cured and his vision was clear. The applicant thereafter coming to know that there were vacancies of Khalasis in the workshop at Guntupalli submitted his application for appointment as Khalasi and offered to undergo medical check up. After

several representations the Deputy Chief Mechanical Engineer, Wagon Workshop, Guntupally appointed the applicant as & Khalasi temporarily. He was promoted to semi-skilled service and then as Black Smith.

The applicant states that he was served with a show cause notice dated 3--8--1987 calling upon him to show cause why his services should not be terminated alleging that the applicant has concealed the fact of his daughter's appointment while seeking job in the year 1979 and also alleging that the applicant undergone re-medical examination contrary to his earlier undertaking and declaration. The applicant submitted his representation denying the allegations and requested the Authorities to conduct an enquiry. The applicant was charge-sheeted and an enquiry was conducted and the enquiry officer held that the charges were proved and imposed the penalty of dismissal. The appeal preferred by him was also rejected. Hence the Application.

The respondents filed their counter with the following contentions.

The main contention in the counter is that the applicant did not furnish any particulars about his previous appointment and about the appointment of his daughter on compassionate grounds. Except the above two allegations, the other averments made in the application were not denied by the respondents. The only contention of the respondents is that the applicant suppressed the fact of his earlier appointment and the appointment of his daughter on compassionate grounds. The respondents state that there are no merits in the application and it has to be dismissed.

We have heard Sri V.Rama Rao, learned counsel for the applicant and Sri N.R.DeVaraj, learned Standing counsel for the Railways.

The points for consideration are:

- i) Whether the applicant suppressed the fact of his earlier appointment and the appointment of his daughter on compassionate grounds?

In this connection it is relevant to read the letter dated 19--11--1979 of the Deputy Chief Mechanical Engineer, Wagon Workshop, Guntupalli to Shri A. Joseph Chennaiah, Medically Unfitted B.Smith in Office.

"You have been decategorised as Black Smith with effect from 28--3--1978. However on your appeal, the MS/BZA has certified you fit in CT with glasses for the post of Khalasi, Vide Certificate No.3277 d/16-11-79.

If you are agreeable to accept the alternative post of a Khalasi subject to the following conditions, you please call at this office at 10.00hours on any working day before 25.11.79 to be screened regarding your suitability.

You will be appointed as a fresh entrant for all purposes.

Your appointment will be either as a Khalasi/Peon on Rs.196/- in scale Rs.196-232(RS)

Your pay shall commence only from the date you actually join duty and your previous service will not be considered for any purpose. "

From the above letter, it is very clear the Deputy Chief Mechanical Engineer was aware of the previous service of the applicant and he categorically stated that his previous service will not be considered for any purpose. Therefore, it is evident that the

Deputy Chief Mechanical Engineer, Wagon Workshop is aware of the previous appointment at the time of issuing appointment order to the applicant. From this, it cannot be said that the applicant has suppressed his previous appointment.

The Deputy Chief Mechanical Engineer, Wagon Workshop, Guntupalli addressed a letter No. R/P.626/J.E. dated 6--8--1979 to "Shri A. Joseph Chennaiah, Retd. Black Smith, C/o A. Marthamma, Clerk, Dy.CME Office, Guntupalli, asking the applicant to submit the fit certificate of vision issued by the recognised qualified Doctor to prove that his eye sight is perfect to discharge your official duties. From this letter also it is clear that the Dy. Chief Mechanical Engineer knows very well that the daughter of the applicant is working directly under him in his office. This is evident from the address given in the letter.

The Medical Superintendent, Vijayawada by his letter dated No. B/MD/43/3 dated 29-10-1979 addressed to GM/Wagon Repair Shop, Rayanapadu stated as under:

"Vide your office letter No, WRS/P.626/JO dated 16--6--1978 you have advised that the employee is prepared to discharge his duties with good vision and wishes to be examined. But vide ~~xxxx~~ letter dated 30-6-1978, the employee has advised Dy.CME that he does not want to go for re-medical examination and that his account has been finally settled and his daughter Kum. A. Marthamma may be appointed as Clerk in your office. Please advise whether his request for appointment to his daughter has been considered and in such case whether his representation for re-medical examination can be entertained in view of final settlement of accounts and appointment to his daughter on compassionate grounds."

(46)

From the letter of the Medical Superintendent, it is very clear that the respondents were reminded the back-history of the applicant and the appointment of his daughter on compassionate grounds. Therefore the respondents fully aware that the applicant's daughter was working in the Department on compassionate grounds and also aware of the applicant's previous appointment.

The applicant in his representation to the Chief Medical Officer, South Central Railway, Secunderabad has stated the whole history of his previous appointment and the accident he met with and he also stated that he lost his vision of the left eye. He also stated that he is in a helpless situation. He stated that Dr G. Venkateswara Rao, Eye Specialist of Gunbr was took kind enough to give him treatment. He had 7 years at his disposal to serve the administration and requested the Chief Medical Officer to advise MS/BZA to re-examine him. ^{From} ~~the~~ material document i.e., the Appointment Order dated 21--11-1979

it is so clear that the applicant was appointed provisionally and his services were dispensed with without assigning any reasons. It is also one of the conditions in the appointment order that "your appointment is as a fresh extrant for all purposes".


A perusal of the material on record clearly establish that the respondents fully aware of the fact of the earlier appointment of the applicant and the appointment of his daughter on compassionate grounds. From the material placed before us, we are of the view that the Authorities on compassionate grounds allowed the


(57)

applicant to appear for re-medical examination and on the basis of the medical report appointed him. The applicant has not suppressed any of the facts.

For the reasons stated above, the respondents have not proved that the applicant has suppressed the fact of his earlier appointment and the appointment of ~~xxx~~ his daughter on compassionate grounds. Therefore the impugned orders are liable to be set aside. They are accordingly set aside. The respondents are directed to reinstate the applicant into service within two months from the date of receipt of these orders with all consequential benefits.

In the result the application is allowed. There will be no order as to costs.


(J. NARASIMHAMURTY)
Member (J)


(R. BALASUBRAMANIAN)
Member (A)

Date: 21-9-1990.


Deputy Registrar (Judl)

- To
1. The Production Engineer, Wagon Workshops, Guntupalli, Krishna District.
 2. The Deputy Chief Mechanical Engineer, Wagon Workshops, Guntupalli, Krishna District.
 3. The Chief Workshops Engineer, S.C.Rly, Railnilayam, Secunderabad.
 4. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
 5. The Secretary, Govt. of India, Ministry of Railways, New Delhi.
 6. One copy to Mr. v. Rama Rao, Advocate
3-6-779, 14th Street, Himayatnagar, Hyderabad-29.
 7. One copy to Mr. N.R. Devraj, SC for Rlys, CAT. Hyd-Bench.
 8. One copy to Mr. J. Narasimha Murty, Member (J) CAT. Hyd. Bench.
 9. One copy to Mr. R. Balasubramanian, Member (A) CAT. Hyd-Bench.
 10. One ~~spore~~ copy.

