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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

O.A.No.651 of 1999.

Date of Order: 5-10-1999.

Between:

T.K. Chandra Sekhar.

..Applicant

A n d

1. Union of India, represented through
General Manager, South Eastern Railway,
Calcutta-43.
2. Divisional Railway Manager,
S.E.Railway, Waltair, Visakhapatnam-530 004.
3. Sr.Divisional Personnel Officer,
S.E.Railway, Waltair, Visakhapatnam-530 004.
4. Divisional Mechanical Engineer,
S.E. Railway, Waltair, Visakhapatnam-530 004.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr. B. S. H. Rao

COUNSEL FOR THE RESPONDENTS :: Mr.C.V.Malla Reddy

CORAM:


THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN


THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

: O R D E R :

ORAL ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (A))

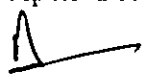
Heard Mr. B.S.H. Rao, learned Counsel for the Applicant and
Mr.C.V.Malla Reddy, learned Standing Counsel for the Respondents.



2. A notification was issued for recruiting 89 SC and 136 ST vacancies in Group 'D' categories in Waltair Division to fill up the backlog vacancies of SC/ST in Group 'D' category in that division. The applicant was interviewed and appointed by Order No.PdV/400/5/Gr.C&D, dated 13-4-1998, (Annexure-A4, page 20 to the OA), and his name stands at Serial No.1. Subsequently, the CBI, Visakhapatnam, filed an FIR alleging that the applicant is responsible for the offences punishable under Section 120B, 418, 420 IPC and Section 13(2) R/W Section 13(1)(d) of the Prevention of Corruption Act, 1988. That FIR is still pending. In the meantime the respondents terminated the services of the applicant by the impugned Order No.WPT/D/SC ST/RECTT/97, dated 7-4-1999, (Annexure.A-5, page 22 to the OA).
3. This OA is filed to set aside the impugned termination order dated 7-4-1999 and for a consequential direction to the respondents to reinstate the applicant in his former post of Diesel Cleaner of Diesel Loco Shed, Waltair, in which capacity he was appointed being an SC candidate against the backlog vacancies with attendant benefits of pay and allowances etc.,.
4. A reply has been filed in this OA. The main contention of the respondents in the reply is that the applicant fraudulently produced invalid SSC Certificate. A copy of the FIR filed by the CBI is enclosed at Annexure.R-I to the Reply to prove the above submission. It is also stated in the reply that the DIG, CBI, vide his confidential letter dated 13-1-1999, had directed that the persons referred in the FIR should not be given appointment pending finalisation of the case. The respondents further submit that in view of the above advise given by the DIG, CBI, the applicant was issued with the termination order as the applicant's services could be terminated in terms of Establishment Serial Circular No.113/93 without any notice. In view of what is stated above the respondents submit that the termination order cannot be challenged.
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5. The point to be considered in this OA is, whether the allegation made by the CBI is a proved one or otherwise to issue the termination order terminating the services of the applicant. It is evident from the reply given by the respondents that the FIR has been filed with certain allegations in the recruitment of the applicant against the backlog quota of reserved vacancies and that the DIG, CBI, has advised the Railways not to give appointment pending finalisation of the case. The DIG, CBI, has not stated that those who had already been appointed, they should be terminated. The applicant herein had already been appointed and hence, the Railways should normally ask the DIG, CBI, whether those who had been appointed even though on a temporary basis, their services should be terminated or not. But it appears no such query has been raised by the respondents addressed to the DIG, CBI.

6. Be that as it may, we have perused the Establishment Serial Circular No.113/93 of the South-eastern Railway, which has been issued in terms of the Railway Board's letter No.E(D&A)92GS 4-3, dated 20-7-1993. That letter of the Railway Board is available at Annexure.A-8, page.25 to the OA. It is seen that if an employee^{is} found ineligible in terms of the recruitment rules etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. Further it is stated that if he is a probationer or a temporary Government Servant, he should be discharged or his services should be terminated. If he has become a permanent Govt. Servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965, may be held and if the charges are proved, the Government Servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed. That letter was issued in view of the Apex Court Judgment in AIR 1990(4) SLR 237 (DISTRICT COLLECTOR, VIZIANAGARAM Vs. M.TRIPURA SUNDARI DEVI). In that letter an extract of observations made by the Apex Court has also been extracted. A reading of



that Circular indicates that if an ineligible person who has not possessed necessary qualification has been appointed on the basis of fraudulent certificate submitted by that candidate, his services can be terminated. Whereas in this case it is a question yet to be decided whether the certificate submitted by him is fraudulent or not and the applicant impersonated anyone else. For that the CBI has filed FIR and that is still pending for disposal by the appropriate Judicial Forum.

7. The learned Counsel for the Respondents further submits that the services of the temporary Government Servant can be terminated without resorting to Disciplinary Proceeding. Such a situation will arise only if a temporary employee is inefficient in his service or does not discharge his duties properly due to some reasons or the other such as absenting etc.,. But in the present case the facts are otherwise. The services of the applicant had been terminated for some alleged misconduct. A Court or Tribunal has got powers to lift the veil and see whether the termination of a Temporary Govt. Servant without any proper notice or without issuing a Charge Sheet is in order or not as per extant rule.

8. From the facts as enumerated above, it appears that the termination of the services of the applicant under the Temporary Servant rules may not be appropriate. Even if a temporary servant has to be terminated, a Show Cause Notice has to be issued to him. But in this case it appears that no such Show Cause Notice had been issued to the applicant herein before terminating his services.

9. In the facts and circumstances of the case, we are of the opinion that the applicant at best can be suspended till the final result had been obtained on the basis of the FIR filed by the CBI in accordance with the rules or if the sufficient material is available to terminate the services of the applicant, then the respondents can take such proceeding in accordance with the law to suitably



conclude the case of the applicant herein resulting in imposition of major punishment.

10. In view of what is stated above, the termination order is not sustainable. Hence the OA has to be allowed and accordingly it is allowed. The applicant should be reinstated into service. But this Order will not stand in the way of the respondents to take such action, as they deem fit on the basis of the material available in this case as per law.

11. The above view of ours is also strengthened by the earlier Judgment of this Tribunal in OA.Nos.720 of 1999 and 1001 of 1999, disposed of on 29-6-1999 and 9-7-1999, even though those Judgments were passed at the admission stage itself as the facts of this case in this OA is similar to the facts in those cases.

12. The OA is ordered accordingly. No costs.



(R.RANGARAJAN)
MEMBER(ADMN.)



(D.H. NASIR)
VICE CHAIRMAN

DATED this the 5th day of October, 1999
Dictated in the Open Court

DSN


11-10-99

1ST AND 2ND COURT

29/10/99

COPY TO :-

1. HDHND
2. HRRN M (A)
3. HSSOP M (D)
4. D.R. (A)
5. SPARE
6. ADMOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR. S.S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 5/10/99

MA/RA/CP.NO.

IN

GA. No. 651/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALL DUE

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

