

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 91/1996

Date of order: 14.5.2002

Churaman S. S/o Sobaran Singh, aged around 35 years,
resident of 187, Kailashpuri, Kota Jun. Ex-Temporary
Status Khallasi, Loco Shed, Gangapur City, Kota.

...Applicant

V E R S U S

1. Union of India through General Manager,
Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway, Kota.
3. Chief Mechanical Engineer,
Headquarter Officer of the
Western Railway, Churchgate,
Bombay.

...Respondents

Mr. P.P. Mathur, brief holder for
Mr. R.N. Mathur, counsel for applicant.
Mr. T.P. Sharma, counsel for respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

(Per Hon'ble Mr. J.K. Kaushik, Judicial Member)

The applicant Shri Churaman S. has filed this O.A.
under Section 19 of the Administrative Tribunals Act, 1985
for setting aside and quashing the Reviewing Authority's order

.. 2 ..



dated 1.11/12.1995 (Annexure A/1), order of Appellate Authority dated 1.10/11.1994 (Annexure A/2) and the order of Disciplinary Authority dated 16.9.1993 (Annexure A/3), imposing upon him the penalty of removal from service, with all consequential benefits. It has been further prayed that the inquiry proceedings may also be declared null and void.

2. The brief facts of the case are that while working on the post of Temporary Status Khallasi, a chargesheet was issued to him vide memo dated 7.10.1988 (Annexure A/4). The allegations against him are that he submitted a fake labour card for getting employment. It has been stated in the O.A. that the applicant denied all the charges and a regular enquiry was instituted. One Shri Raghunath Prasad was appointed as Enquiry Officer to conduct the enquiry.

3. It has been asserted that the applicant submitted a representation to the Disciplinary Authority to change the enquiry officer on various grounds vide letter dated 20.4.1992 (Annexure A/5). His said representation was rejected on 10.2.1993 (Annexure A/6). Further the Enquiry Officer submitted his report, which was contrary to the facts on record. The request of the applicant for summoning PW-I, Tundala, under whom the applicant worked for some time, was turned down. Even the record from PW-I, Tundala were not called. It has been said that there was some mistake even in the number of labour card but the mistake has been considered ~~xxx~~ as substantial.

4. The applicant filed an O.A. No. 97/94 before this Tribunal but the same was rejected on 22.3.1994 as premature with observations that the Appellate Authority may consider

the appeal. It has been mentioned that he was appointed as a substitute Khallasi with effect from 15.6.1984 as per the instructions of Senior Divisional Mechanical Engineer, Kota. This appointment was done on 15.6.1984 after the verification of the facts as per the Railway Boards directives. However, the applicant was discharged from service on 25.9.1994 due to pending investigation of particulars of service of the applicant and others. The records were verified by the vigilance and no malafide was found and the applicant was ordered to be re-engaged on 24.6.1985 and he ~~was~~ continued to work at various places as per the requirement of railway administration till such time he was removed from service.

5. One Shri Raghunath Prasad, DCWI, Kota started the enquiry on 21.2.1991 in the matter of charge memo dated 1.8.1988, ~~to~~ which was never communicated to the applicant. The said chargesheet was never served to the applicant. The O.A. has been assailed on a number of grounds mentioned in the O.A. The same shall be discussed in the later part of the judgement. This Hon'ble Tribunal was pleased to admit the O.A. on 13.2.1996 and the notices were issued to the respondents for filing the reply. The respondents have filed the reply and have controverted the facts and grounds raised in the O.A. The respondents have submitted in the reply that there was no sufficient reason to change the Enquiry officer and the representation of the applicant for changing the Enquiry Officer ~~was~~ was rejected by the Competent Authority. It was not considered necessary to call PWI, Tundala since the matter related to PWI, Gaziabad. The applicant worked as a casual labour under

CWS/GZB from 15.6.1984 and not as a substitute. Further, it has been asserted that the chargesheet was very much communicated to him and there was only one chargesheet dated 7.10.1988 (Annexure A/4) and the same was duly acknowledged by the applicant on 30.12.1988. The enquiry has been conducted as per the rules after given full opportunity of hearing to the applicant. The applicant did not cross examine the witness FWI. The applicant was also asked the questions under Rule 9 (21) of Railway Servants (Discipline & Appeal) Rules but he refused to answer the questions. Thus, there is no infirmity in the impugned orders and the O.A. deserves to be dismissed with costs.

6. We have heard the learned counsel for the parties and have carefully perused the records of the case. No rejoinder has been filed on behalf of the applicant.

7. The learned counsel for the applicant vehemently argued that the representation was made for change of the Enquiry Officer on grounds of bias and as per the instructions issued by the Railway Board, it was incumbent upon the Enquiry Officer not to proceed with the enquiry till disposal of his representation. Despite the said representation, the Enquiry Officer proceeded with the enquiry and the material witnesses were examined during the period from the date of submission of representation and prior to the date of rejection of his representation. Further, it has been also asserted that the representation of the applicant regarding change of the Enquiry Officer on the ground of bias has been rejected by an Incompetent Authority and it has not been decided by the Competent Authority i.e. Respondent No. 3, Chief Mechanical Engineer. We have gathered the requisite information in the matter and it

seen that the representation was dealt with by the DRM which is a revising authority and is competent to decide the representation for change of the Enquiry Officer and there is no illegality in this matter.

8. As regards the contention that once the application has been made for change of Enquiry Officer on the ground of bias, we agree that the instructions on the subject do provide for such procedure. However, this case has got certain special and peculiar facts and circumstances as discussed in the succeeding paragraphs. In the complete pleadings submitted by the applicant, the applicant has not stated as to what is his initial date of appointment and as to at which places he was appointed as a casual labour. He has also not indicated as regards to the position of issuance of the service card i.e. who issued the service card, when the service card was supplied to him. A specific question was posed to the learned counsel for the applicant as to what was the actual date of engagement in service in respect of the applicant and where had he worked prior to his re-engagement in the year 1984. It was also asked that whether he had any document in support of his working so that the correct fact could be ascertained regarding the actual working of the applicant prior to his re-engagement in service but the learned counsel for the applicant expressed his inability to reply to these queries. On the other side, the learned counsel for the respondents submitted that as per the rules in force no fresh casual labour was to be engaged after 14.7.1981 except after the due permission from General Manager.

After the said cut off date only the persons who had earlier worked in the Railway Department could be re-engaged as casual labour. The applicant produced the fake certificate and that basis he got engaged in service. However, during the enquiry, the applicant was given sufficient opportunity but he has not been able to prove that he worked anywhere in the department and he has shown complete ignorance regarding the particulars of the person who issued the card and the place at which the card was issued to him. It has also been argued that since the applicant wanted to take advantage of the alleged service card, the burden was on him to prove that the contents of the service card were correct and true and the card was not fake. But instead of proving his bonafide, the applicant has taken recourse to the technicalities and has been trying to find fault with the administrative machinery.

9. The learned counsel for the applicant has argued that the enquiry officer was in a hurry and he did not conduct the proceedings properly in as much as the witness which was called from Gaziabad alongwith the records was examined whereas the decision on his representation was pending. It is not understood as to what prejudice could have been caused to the applicant by the procedure adopted, since the applicant did not know the place and date of the issue of the very casual labour card and that he did not remember as to under which official he has worked. The record would have been relevant provided some specific date of the working of the applicant was indicated. Once there is no specified period during which the applicant is said to have worked at Gaziabad, how could E.O. have decided as to what record was to be examined. In such circumstances no prejudice

After the said cut off date only the persons who had earlier worked in the Railway Department could be re-engaged as casual labour. The applicant produced the fake certificate and that basis he got engaged in service. However, during the enquiry, the applicant was given sufficient opportunity but he has not been able to prove that he worked anywhere in the department and he has shown complete ignorance regarding the particulars of the person who issued the card and the place at which the card was issued to him. It has also been argued that since the applicant wanted to take advantage of the alleged service card, the burden was on him to prove that the contents of the service card were correct and true and the card was not fake. But instead of proving his bonafide, the applicant has taken recourse to the technicalities and has been trying to find fault with the administrative machinery.

9. The learned counsel for the applicant has argued that the enquiry officer was in a hurry and he did not conduct the proceedings properly in as much as the witness which was called from Gaziabad alongwith the records was examined whereas the decision on his representation was pending. It is not understood as to what prejudice could have been caused to the applicant by the procedure adopted, since the applicant did not know the place and date of the issue of the very casual labour card and that he did not remember as to under which official he has worked. The record would have been relevant provided some specific date of the working of the applicant was indicated. Once there is no specified period during which the applicant is said to have worked at Gaziabad, how could E.O. have decided as to what record was to be examined. In such circumstances no prejudice

can be said to be caused to the applicant even though the procedure of conducting the enquiry has not been strictly followed.

10. The applicant has also drawn our attention to Annexure A/8 letter dated 8.4.1994. As per the circular, post facto approval of General Manager has been given in regard to the engagement of 62 casual labour who have secured employment on the basis of fake cards and the learned counsel for the applicant has argued that he has been discriminated against in the matter of employment. We are constrained to observe that if one obtains employment on the basis of fake casual labour card fraudulently, that cannot be a ground of discrimination. After-all the court cannot be a party to perpetuate the illegality and contention of the applicant that 62 casual labours which were similarly situated and have secured employment on the basis of fake card, and ^{since} have been regularised and that the applicant also should be similarly regularised, cannot be said to be a justified ground and we outright reject this plea of the learned counsel for the applicant.

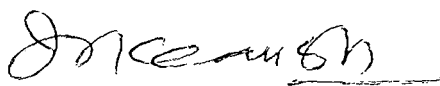
11. It is well settled principle of law that fraud vitiates all solemnly acts. It was for the concerned delinquent official to prove that he had worked in the Railway as a casual labour prior to the cut off date of 14.7.1991, on the basis of which he came to be re-engaged in service. But the applicant does not remember any facts in regard to such employment, place of working, details of obtaining the casual labour card and entries made therein. He wanted to develop his case on the ~~xx~~ weakness of the prosecution. Thus, the re-engagement

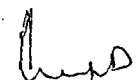
of the applicant in the year 1984 was not in order and the action of the respondents cannot be faulted with. ~~Thy~~ The very basis of the re-engagement of the applicant in the year 1984 was based on the earlier working in the Railways and the earlier working of the applicant is not established. The least expected of the applicant is that he should have disclosed his actual working and the particulars of the authority who issued the casual labour card to him. It is not believable that if a person who has actually rendered service anywhere, will not remember the place and other particulars of his working. As a natural consequence it could be inferred that applicant did not render any service prior to his re-engagement in service in the year 1984 and once his working is not proved it naturally follows that the wrong entries have been reflected in the casual labour card and the same could be definitely termed as a fake casual labour card. In this view of the matter there is no infirmity in the impugned orders under challenge in this Original Application.

12. The applicant was ~~xxx~~ re-engaged as a casual labour on the basis of fake entries in the casual labour card and one of the pre-condition of the re-engagement was that ~~xxxxx xxx~~ one ought to have worked in the department as casual labour prior to 14.7.1981. Once the applicant got the very employment by playing fraud with the department, the respondent department could have terminated the service of the applicant even without conducting any enquiry or observing the principle of natural justice. In this context, we refer to the judgement of the Apex Court in the case of Union of India vs. V. Bhaskaran, 1995 (Suppl) 4 SCC 100 wherein it was held that if by

committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it void-
able at the ^{option} ~~office~~/of the employer. However, in this case the oral enquiry was conducted and the applicant was given opportunity to take part in the same but he himself did not avail the opportunity. In any case there has been no prejudice caused to his defence in any manner. We are of the considered opinion that no interference is called for from this Tribunal in the matter.

13. In view of the aforesaid discussions, the Original Application has no force and is meritless. The same is dismissed with no order as to costs.


(J.K. KAUSHIK)
Judl. Member


(A.P. NAGRATH)
Adm. Member

kumawat