

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 31st day of October, 2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

ORIGINAL APPLICATION No. 421/2003

Rakesh Kumar Saini,
s/o Shri Chhotu Lal Saini,
r/o Plot No.1, Near Loco Gate,
Dhani Karigran, Phulera,
last employed as Helper Khallasi
Under DSK, North Western Railway,
Ajmer.

.. Applicant

(By Advocate: Mr.C.B.Sharma)

Versus

1. Union of India
through General Manager,
North Western Zone,
North Western Railway,
Jaipur.
2. The Divisional Railway Manager,
North Western Railway,
Jaipur.
3. Chief Material Manager,
North-Western Railway,
General Stores,
Ajmer.
4. The Dy. Controller of Stores (COS),
North Western Railway,
Ajmer.

.. Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

ORIGINAL APPLICATION No. 422/2003

Aditya Kumar,
s/o Shri Jagmohan Lal,
r/o House No.686, Station Road,
Nasirabad, District Ajmer,
last employed as Helper Khallasi
under DSK, North Western Railway,
Ajmer.

.. Applicant

(By Advocate: Mr.C.B.Sharma)

Versus

1. Union of India
through the General Manager,
North Western Zone,
North Western Railway,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Jaipur.
3. Chief Material Manager,
North-Western Railway,
General Store,
Ajmer.
4. Deputy Controller of Stores (COS),
North-Western Railway,
Ajmer.

.. Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

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ORIGINAL APPLICATION No. 423/2003

Lalit Kumar
 s/o Shri Jagmohan,
 r/o House No. 686, Station Road,
 Nasirabad (Ajmer)
 last employed as Helper Khallasi
 Under DSK, North Western Railway,
 Ajmer.

.. Applicant

(By Advocate: Mr.C.B.Sharma)

Versus

1. Union of India
 through General Manager,
 North Western Zone,
 North Western Railway,
 Jaipur.
2. The Divisional Railway Manager,
 North Western Railway,
 Jaipur.
3. Divisional Signal Communication Engineer,
 Office of the DRM,
 North-Western Railway,
 Ajmer.
4. The DSTE,
 North-Western Railway,
 Office of the DRM,
 Ajmer.

.. Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

ORIGINAL APPLICATION No. 424/2003

Rakesh Kumar Tak,
 s/o Shri Panna Lal,
 r/o Plot No.231/10,
 Sindhi Topdara, Ajmer,
 last employed as Helper Khallasi
 Under TCI, North Western Railway,
 Abu Road.

.. Applicant

(By Advocate: Mr.C.B.Sharma)

Versus

1. Union of India
through General Manager,
North Western Zone,
North Western Railway,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Jaipur.
3. Divisional Signal Communication Engineer,
Office of the DRM,
North-Western Railway,
Ajmer.
4. The DSTE,
North-Western Railway,
Office of the DRM,
Ajmer.

.. Respondents

(By Advocate: Mr. V.S.Gurjar and Mr. Anupam Agarwal)

O R D E R

Per Hon'ble Mr. M.L.CHAUHAN.

By this common order, we propose to dispose of all these cases as the issues involved in these cases are identical.

2. For decision in these cases the pleadings made in the case of Rakesh Kumar Saini (OA No.421/2003) are being referred to which are almost identical in all these cases.

3. Briefly stated, facts of the case are that the applicant namely Rakesh Kumar Saini who was working as Helper/Khallasi at Ajmer was proceeded departmentally alongwith other applicants. Disciplinary proceedings were initiated against these persons as per the preventive checks conducted by the Vigilance Department and as per the report received from the Vigilance Department, charge against the applicant was that he secured employment on the post of Khallasi on the strength of forged and fake transfer order, purportedly issued by the DRM (E), Jaipur, knowingly that he was never appointed in railway service and thereby cheated the railway administration in the matter of securing employment. Accordingly, major penalty chargesheet was issued in the case of Shri Rakesh Kumar Saini vide order dated 1.11.2001. Similarly, chargesheets were also issued in respect of other applicants on different dates in the year 2001. It is stated by the applicant Shri Rakesh Kumar Saini that he was appointed as Helper/Khallasi after applying to the post on 15.7.1996 and he was allowed to join his duties. It is further stated that thereafter inter-divisional transfer from Jaipur Division to Ajmer Division was allowed and consequently the applicant was posted in Ajmer Division vide order dated 17.7.1997. It is further stated that the applicant was placed under suspension on the ground that disciplinary proceedings were

contemplated vide order dated 17.7.2000 (Ann.A6). Thereafter the applicant was served with major penalty chargesheet on 1.11.2001. The applicant has further stated that the enquiry against him was concluded within two days with the direction to the Presenting Officer to submit his written briefs on 14.12.2001 and with further direction to applicant to submit his written brief on 15.12.2001. It is further stated that the Presenting Officer submitted his brief on 14.12.2001 and the applicant submitted his brief on 18.12.2001 and on 19.12.2001 the Enquiry Officer submitted his report. It is further stated that the applicant submitted representation against the enquiry report on 2.1.2002 and the Disciplinary Authority imposed punishment of removal from service vide order dated 24.1.2002. It is further stated that the appeal filed by the applicant against imposition of penalty of removal from service was also rejected by the Appellate Authority vide order dated 10.6.2003. To the similar effect are the averments made by the other applicants who were also engaged as Helper/Khalasi in the year 1996 and were transferred from Jaipur Division to Ajmer Division in the year 1997. In their cases also, major penalty chargesheet was also served in November, 2001. Enquiry in their cases also proceeded in the similar manner and ultimately they were imposed punishment of removal from service in January/February, 2002. Appeal preferred against the

order of removal from service was also rejected. Hence, they have filed OAs against these impugned orders.

4. The main challenge taken by the applicants is that the enquiry has not been conducted properly, inasmuch as, no reasonable opportunity was given to them to defend their cases. In fact the enquiry was concluded within two days which is in violation of the principles of natural justice. It is stated that there is no document on record to prove that documents have been fabricated and false which have been prepared by the applicants nor any evidence of the prosecution has proved that the documents have been prepared by the applicants. It is further stated that the evidence of the preliminary enquiry cannot be relied upon without getting confirmed in the departmental enquiry and the authority who has issued the chargesheet was not competent to issue the same. In all these OAs, the applicants have challenged the impugned orders on similar grounds.

5. Notices of these applications were given to the respondents. The respondents have filed reply. The respondents have specifically denied that the applicant was appointed as Helper/Khallasi after applying on 15.7.1996. It is specifically pleaded that the applicant has not stated as on what basis 'whether on the basis of any public notice inviting

applications or otherwise, he had submitted an application for the post of Khalasi and to which office, he had made the application for appointment and by which authority, he was appointed in a particular office'. It is further stated that applicant has not substantiated his statement about his having been appointed on the post of Helper/Khallas on 15.7.1996 by annexing any copy, either of the order of appointment or any other documents, showing him as having been appointed on the said post. It is further stated that as to when he had joined his duties and under which respondent he was working from the said alleged date of appointment. Thus, according to the respondents, the very claim of appointment lacks foundation meaning thereby that he was never appointed on the post of Helper/Khalasi as alleged or any other date in nay office of the railway. The respondents have also disputed the fact regarding the applicant having been made request for inter-divisional transfer to Ajmer from Jaipur and issuance of the order dated 15.7.1996 in the case of applicant Shri Rakesh Kumar Saini. It is further stated that the letter purportedly to be the order transferring the applicant from Jaipur to Ajmer which is stated to have been issued by the DRM, Jaipur on the basis of which the applicant was relieved was found to be forged document during the disciplinary proceedings held against the applicant. The fact that

the applicants were given posting as Khallasi pursuant to the forged relieving order has been admitted as according to the respondents at that time there was no suspicion about its authenticity and genuineness of the documents and thus they were allowed to join under respondent No.3 and 4 after they were relieved from Jaipur. Thus, according to the respondents, the posting order given to the applicants on the basis of forged and fabricated documents is of no consequence and they have not secured any right or status as a Railway servant by joining at Ajmer on the basis of forged documents. The respondents have also categorically stated that the applicants secured employment on the strength of forged and fake document fully proved in the departmental proceeding culminating into punishment of removal from service and rejection of appeal filed by him against the said punishment order is also fully justified. It is further stated that during the course of oral enquiry, the witnesses had confirmed their earlier statement made during the course of preliminary enquiry. It is further stated that all the prosecution witnesses were cross examined by the defence counsel of the applicant. As such, no infirmity can be found and it is legally permissible to rely upon the statement made in the preliminary enquiry especially when the said statement has been relied in regular enquiry and the witnesses were examined and the applicants were given

opportunity to cross examine the witnesses. As regards completion of whole enquiry within two days, it is stated that all the prosecution witnesses were available on that day. They had been examined and thereafter cross examined by the defence counsel on the same day and since the applicant did not produce any defence witness and thereafter the enquiry was concluded. Thus, according to the respondents, there cannot be said to be any infirmity in concluding the enquiry with the consent of the applicant and his defence counsel. For that purpose, the respondents have placed on record the record note. The respondents have further stated that the applicant has prepared the fabricated and false documents and as such, the question of proving that a particular document had been fabricated by him does not arise. The charge against the applicant was that he had secured employment on the strength of forged and fake transfer order knowingly that he was never appointed in the railway service. The respondents have stated that the transfer order purportedly issued by the office of DRM, Jaipur on the basis of which relieving order was also purportedly issued has been proved to be forged and false document on the basis of the statement of the witnesses who have categorically stated that no such transfer orders were issued by the DRM office, Jaipur. Thus, the question of proving the said transfer order by placing any other document on the

record does not arise as no one will testify that he had forged the documents. However, the fact which has been established in the enquiry is that the applicant had secured employment on the basis of forged and fabricated documents. A copy of the statement made by the ~~respondents~~^{witnesses} during the course of preliminary enquiry and the contents of that statement has been affirmed by the said witness during the course of regular enquiry has been annexed alongwith the replies. The respondents have also placed on record, record notes of the proceedings to show that the applicants have never raised any objection about absence of original listed documents and furnishing of attested copies of the said documents during the course of enquiry.

6. To the similar effect is the reply submitted by the respondents in other three OAs also.

7. We have heard the learned counsel for the parties and gone through the material placed on record. We are of the firm view that the applicants have not made out any case for our interference. It is a case where the applicants were allowed to join their duties at Ajmer pursuant to the fabricated and forged documents purporting to be order transferring them from Jaipur to Ajmer and having been relieved by the office of DRM, Jaipur where in fact no such orders were issued. It is born out from the record that the preliminary

enquiry in the matter was conducted and thereafter regular enquiry was conducted by issuing chargesheet. The respondents have placed on record copy of the statement made by the witnesses during the course of preliminary enquiry which was relied in the regular enquiry and contents of such statement were also certified by the concerned witnesses. It is also born out from the record that the applicants were given opportunity to examine the witnesses and the applicants as well as their defence counsel have failed to avail that opportunity. The respondents have also placed on record the said documents. Thus, the applicants cannot be heard to say now that no proper opportunity was given to them in this case when they have failed to avail the opportunity.

8. That apart, it is a case where the applicants have procured appointment by creating false and fabricated documents and thus they are guilty of fraud. In such cases, it was not mandatory for the respondents to hold the enquiry as the appointment obtained by way of forged and fabricated documents is void-ab initio and vitiated and provision of Article 311 is not attracted in such cases. That apart, the respondents have conducted the enquiry and in the enquiry it has been established that the applicants have obtained employment on the basis of fake and fabricated documents.

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9. The matter on this point is no longer res-integra. What is fraud has been defined in the case of Derry vs. Peek, (1889) 14 AC 337. It has been held that fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of former either by words of letter. Although negligence is not fraud but it can be evidence on fraud. In Lezarus Estate vs. Berly (1956) 1 All ER 341, the court stated that no court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgment, contracts and all transactions wharsoever. Further, the Apex Court in the case of R. Vishwanatha Pillai vs. State of Karnataka and others, 2004 SCC (L&S) 350 has held that a person illegally appointed is not a person holding a civil post and provision of Article 311(2) is not attracted in such cases and appointment procured on the basis of forged documents is void and non-est. In that case the delinquent officer was dismissed from service as he has procured appointment in the post reserved for SC candidate by producing a false caste certificate. In that case the Apex Court up held the order of

dismissal. The plea of the appellant therein that he has rendered 27 years of service, as such, the order of dismissal be converted into the order of compulsory retirement so that he can get pensionary benefits, the Apex Court had held that such persons having obtained appointment by playing fraud is not entitled to invoke equity jurisdiction of Supreme Court to claim such relief. A person who seeks equity must come with clean hands. He, who comes to the court with false claim cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got appointment on the basis of false caste certificate by playing fraud. No sympathy and equitable consideration can come to his rescue. It was further held that equity or compassion cannot be allowed to be the arms of law in a case where an individual acquired a status by exercising fraud.

10. For the foregoing reasons, we are of the view that the aforesaid OAs are bereft of merit and the same are accordingly dismissed with no order as to costs.



(J.P. SHUKLA)

Administrative Member



(M.L. CHAUHAN)

Judicial Member