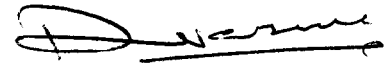


CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

Pre-delivery order in O.A.375/2002 is
sent herewith for consideration pl.



(D.C.Verma)
Vice Chairman(Judicial)
20.7.2003

Hon'ble Shri Anand Kumar Bhatt, AM-

agreed
Anand
23/6

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 375 of 2002

Jabalpur, this the 24th day of June, 2003

Hon'ble Shri D.C. Verma, Vice Chairman (Judicial)
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

Hari Prakash Arya s/o Bhagwandass,
aged about 30 years, house No. 370,
In front of Kambal Mill, Khusipura,
Jhansi (UP)

- APPLICANT

(By Advocate - Shri S.N. Khare)

Versus

1. The Union of India through the General Manager,
Central Railway, CSTM, Mumbai.
2. Addl. Divl. Rly. Manager, Central Railway, Jabalpur.
3. Senior Divl. Mechanical Engineer, Central Railway,
Jabalpur.
4. Divl. Mechanical Engineer, Central Railway, Jabalpur

RESPONDENTS

(By Advocate - Shri H.B. Shrivastava)

O R D E R

By D.C. Verma, Vice Chairman (Judicial):-

The applicant has been dismissed from service in pursuance to charge memo on the alleged ground that he filed a fake certificate regarding his qualification from Industrial Training Institute (in short 'ITI'), Jhansi. Appeal against the penalty order was also dismissed. Hence this OA.

2. The brief facts of the case are that in pursuance to an advertisement dated 25.2.1996 of the Railway Recruitment Board (in short 'RRB'), Bhopal, the applicant applied for the post of Diesel Assistant. The applicant was called for written test and viva voce, and was finally declared passed on 19.6.1996. After medical examination, the applicant was sent for training and posted as Diesel Assistant on 29.5.1997 at Sagor Depot of Jabalpur Division of Central Railway. After a complaint was received with regard to the qualification certificate produced by the

Contd.....2/-

applicant, an enquiry was made by the vigilance section. The applicant was also associated with the vigilance enquiry. ~~xxx~~ Thereafter charge-sheet dated 26.6.2000 (Annexure-A-7) was served to the applicant. A reply (Annexure-A-8) to the charge-sheet was submitted. After completion of the enquiry, the enquiry officer submitted his report (Annexure-A-9). A copy of the enquiry report was served to the applicant with Annexure-A-10. A reply to the same was given by the applicant vide Annexure-A-11. After considering the applicant's reply, the disciplinary authority passed the order of dismissal. The applicant filed an appeal on 6.6.2001. The same was also dismissed.

3. There are four articles of charges against the applicant. The first was that the applicant obtained employment in Railways on the basis of ITI certificate issued by ITI Jhansi which is fake/bogus. The second article of charge was that he did not fulfil the minimum technical qualification stipulated in the RRB notification. The third article of charge was that the said certificate was filed with malafide intention by hiding the fact regarding the genuineness of the ITI certificate. And the Fourth Article of charge was that the applicant received his salaries and wages after obtaining employment in Railways on the basis of a fake/bogus certificate.

4. The main contention of the learned counsel of the applicant is that it is not at all proved that the certificate issued by the ITI Jhansi was fake and bogus. The submission is that though a letter was sent to the Principal, ITI, Jhansi to verify the genuineness of the said certificate but the Principal did not, in his report, specifically mention that the certificate was fake/bogus. The submission is that as per the communication sent by the Principal he simply verified the marks and not the genuineness of the certificate. The learned counsel has placed much reliance on the Principal's communication

dated 20th January, 2000 which was sent by him in reply to the letter of the Chief Vigilance Inspector (in short 'CVI') dated 16.12.1998.

5. The applicants' whole case revolves round the Principal's communication dated 20.1.2000 where in against the name of the applicant the word 'ASATYA' is recorded.

6. The submission of the learned counsel of the applicant is that the word 'ASATYA' is nowhere explained. Only an inference has been drawn by the department that 'ASATYA' carries the meaning of the certificate being fake and bogus. On the other hand the submission of the learned counsel of the respondents is that the only meaning which can be assigned to the word 'Asatya' is that the certificate is fake and bogus.

7. On the issue involved in the case, counsel for the parties have been heard at length.

8. The only witness examined in the case is the CVI who enquired into the matter and on the basis of whose report the charge memo was served to the applicant. In his statement the CVI has stated that he had visited the office of the Principal from where the reply dated 20th January, 2000 was received. In his communication dated 16.12.1998 to the Principal, the CVI Shri K. Ramchandran had requested to verify the authenticity and genuineness of the certificates of 11 persons including the applicant. In his reply to the letter dated 16.12.1998 the Principal, against the two names including the present applicant Hari Prakash Arya, wrote the word 'Asataya' and against 9 others, the word 'Satyapit' was written. Thus, except the two certificates, including of the present applicant, others were verified correct by the Principal.

9. With regard to the relevant certificate, a copy of which has been annexed in the present OA, it is seen that it was only a provisional trade certificate allegedly issued on

19.10.1985. It was on its basis the applicant procured the job. The final certificate issued on its basis was not produced by the applicant at any stage.

10. The learned counsel for the respondents submitted that if the provisional trade certificate submitted by the applicant along with his application at the time of recruitment was genuine, the applicant had many opportunities to produce the final trade certificate issued on its basis. The contents of this provisional certificate show that the National Trade Certificate was to be issued by the National Council for Training. If the applicant had actually passed the ITI course and had obtained the provisional trade certificate, he must have been issued the National Trade Certificate by the National Council for Training. The submission of the learned counsel of the respondents is that non-production of the certificate issued by the National Council also goes against the applicant's case that the provisional certificate filed by him was not fake or bogus. The learned counsel for the respondents has also submitted that strict rules of evidence cannot be applied in the case of departmental proceedings with regard to the production of documents or with regard to the facts. The submission is that the findings of the departmental proceedings cannot be interfered with if it is based on some evidence. The Tribunal cannot sit in appeal to marshal the evidence produced during the departmental proceedings and the order of the departmental authority in respect of assessment of evidence and conclusion thereon is to be maintained, if preponderance of probabilities and some material is on record to arrive at a conclusion about the guilt of the applicant.

11. We have gone through the enquiry file and we find that the CVI Shri K. Ramchandran was cross-examined at great length. His statement has been examined by us and

we find that even at the time of enquiry an objection was taken, which has been taken before us also, that the letter sent by the Principal in reply to the query of the CVI is neither signed nor dated. We have found that when this objection was raised during the enquiry proceedings fresh certified copy bearing the date and signature was again supplied. Thus, the material defence that the Principal had not sent a reply was ^{rightly} ~~not~~ accepted.

12. We also find merit in the argument of the learned counsel of the respondents that if the applicant was actually a scholar of the ITI Jhansi and had obtained provisional ITI certificate, the applicant could have very well produced the documents in support of his defence. As stated above, the provisional certificate was issued in the year 1985 and the final certificate was to be issued by the National Council for Training but even that certificate has not been produced by the applicant either during the course of departmental enquiry or in this case.

13. The submission of the learned counsel for the applicant that the word 'Astaya' would not lead to the inference that the certificate filed by the applicant was fake/ bogus, in the facts and circumstances of the case, has in our view, no merit.

14. No procedural flaw or defect has been pointed out on behalf of the applicant. The finding of the disciplinary authority is based on evidence and consequently this Tribunal cannot reappreciate the evidence to substitute its own finding. As observed in the case of R.S. Saini Vs. State of Punjab, (1998) 8 SCC 90, the Court has to bear in mind the rule that it cannot, while exercising writ jurisdiction, reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. ^{In that case} It is observed that "if there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own

independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings".

15. One of the defence argument is that the applicant completed the apprenticeship and a National Apprenticeship certificate was also issued to the applicant for the period 1.9.1990 to 31.8.1991. The submission is that in case the ITI certificate issued by the ITI Jhansi was fake/bogus, the applicant would not have been able to complete his apprenticeship training. In our view, however, this argument has no substance. The National Apprenticeship certificate even if issued on the basis of the ITI Certificate issued by the ITI, Jhansi, that would not make the ITI certificate genuine in case it was not issued by the ITI Jhansi. Accepting the face value of the ITI certificate as genuine, the respondents had given employment to the applicant. It was only after a complaint was received and indepth enquiry was made from the ITI Jhansi, it was found that the certificate was fake/bogus. In the circumstances, any certificate/training/employment obtained by the applicant on the basis of a fake/bogus ITI certificate allegedly issued by the ITI Jhansi cannot stand and provide genuineness to the ITI certificate.

16. The other submission on behalf of the applicant is that the Principal of the ITI Jhansi was not examined by the department. Hence, the certificate cannot be treated as fake/bogus. In our view, this submission too, has no merit. The provisional certificate was allegedly issued by the ITI Jhansi in the year 1985 and the enquiry was made in the year 1996. It is not evidenced that the Principal who was available at the time of the vigilance enquiry in the year 1996 was the same who had allegedly issued the

