

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.4571/2013

Order reserved on 15th November 2016

Order pronounced on 20th December 2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Suvash Yadav
Adopted s/o Mr. Chander Bhan
Helper Khalasi
In the office of Senior Section
Engineer/Signal/Jind
Delhi Division (Northern Railway)
New Delhi

..Applicant

(Mr. N N S Rana, Advocate)

Versus

1. Union of India through General Manager
Northern Railway HQ
Baroda House, New Delhi – 1
2. Divisional Railway Manager
Delhi Division (Northern Railway)
State Entry Road, New Delhi
3. Senior Division Personnel Officer (Delhi Division)
(i.e. Sr. DPO/Delhi)
DRM's Office (Northern Railway)
State Entry Road, New Delhi
4. Assistant Divisional Signal and
Telecom Engineer/Rohtak
Delhi Division (Northern Railway)
Rohtak (Haryana)
5. Senior Divisional Signal & Telecom Engineer
(C) (i.e. Sr. DSTE (C))
DRM's Office/Northern Railway
State Entry Road, New Delhi

..Respondents

(Mr. A K Srivastava, Advocate)

ORDER**Mr. K.N. Shrivastava:**

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(a) That the Hon’ble Tribunal may graciously be pleased to pass an order quashing the impugned major penalty charge memorandum dated 06.03.2013, in which two arbitrary and illegal charges have been leveled against Applicant, 9 years after the applicant was appointed as a Khalasi on compassionate grounds, by ignoring the fully valid legally, adoption deed dated 20.01.1990 and by completely ignoring the verification done by Inspector of Delhi Division Northern Railway also about applicant’s qualifications, before applicant was approved and appointed as Khalasi on 05.06.04 on compassionate grounds as per rules, after the death of his adoptive father Sh. Chander Bhan gangman on Delhi Division of Northern Railway, in year 2003.”

2. The brief facts of the case are as under:-

2.1 The applicant claims to be son of Mr. Chander Bhan, who while working as Khalasi under the respondent-Railway Department, died in harness on 28.03.2003. The biological parents of the applicant are Mr. Birja and Mrs. Anari Devi. They hail from Village & Post Office Mathauli, District Kushinagar, UP.

2.2 The applicant was granted compassionate appointment on 05.06.2004 by the respondents following the death of his adoptee father, Mr. Chander Bhan.

2.3 The applicant was born on 01.04.1977 and is stated to have passed 8th class as per the certificate issued by the Head Master of the School dated 16.08.2003 (Annexure A-6). The case of the applicant is that he was taken in adoption by late Mr. Chander Bhan vide Annexure A-4 Adoption Deed,

which is not a registered one. The said Adoption Deed is stated to be having thumb impressions of late Mr. Chander Bhan and Mrs. Anari Devi – biological mother of the applicant.

2.4 The applicant further stated that pursuant to his adoption by late Mr. Chander Bhan, his mother divorced his biological father Mr. Birja in the presence of prominent persons of the society in the village, and re-married to Mr. Chander Bhan as per local customs, which is permissible under Section 7 (1) of the Hindu Marriage Act, 1955. In this connection, the learned counsel relied upon Annexures A-8 and A-9 certificates issued by the Block Head, Motichak and Village Head (Chairman), District Motichak, Kushinagar, respectively.

2.5 The applicant has also submitted the Annexure A-7 (colly.) affidavits of some of the local residents of Jind, where late Mr. Chander Bhan (Yadav) was last posted and was residing at the time of his death, to say that Mrs. Anari Devi is, in fact, the wife of late Mr. Chander Bhan and applicant is his son.

2.6 The respondents, through their Vigilance Wing, came to know that the applicant has furnished a forged school certificate dated 16.08.2003 regarding his educational qualification, and that he is not the son of deceased Chander Bhan and his father is Mr. Birja. Accordingly, they issued Annexure A-3 (colly.) charge sheet dated 06.03.2013 to the applicant leveling two charges therein against the applicant as mentioned below:-

“Draft article of charges on the basis of which action under D&AR rules is proposed to be initiated against Shri Suvash Yadav, Helper Khallasi under SSE/Signal/Jind.

Shri Suvash Yadav, Helper Khalasi had committed the following serious irregularities for taking appointment in Railway on compassionate ground:-

- 1- He had taken appointment in Railway as S&T Khalasi on compassionate ground stating the son of late Shri Chander Bhan, Ex Gangmen under SSE/P. Way/Jind whereas he is the son of Shri Birja, Village and Post Office-Mathauli Bazar, Distt. Kushi Nagar (U.P).
- 2- He submitted a forged VIII class passed Scholar's Register & Transfer Certificate dated 16-8-2003 issued from Siya Ram Das, Higher Secondary School, Gambhirpur, Kushi Nagar, stating himself VIII class passed.

By the above act of omission and commission Shri Suvash Yadav Helper Khalasi (S&T) under SSE/Signal/Jind failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant, thereby contravened the provisions of Rule 3.1(i), (ii) & (iii) of Railway Service Conduct Rules 1966.”

2.7 The respondents have also instituted a disciplinary enquiry (DE) against the applicant. The applicant has approached this Tribunal in the instant O.A. during the pendency of the enquiry, praying for the reliefs as mentioned in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 15.11.2016. Mr. N N S Rana, learned counsel for applicant and Mr. A K Srivastava, learned counsel for respondents were heard.

4. Learned counsel for applicant, besides reiterating the points raised by the applicant in the O.A., stated that the applicant is an adopted son of late Mr. Chander Bhan and that his mother divorced his biological father and re-married Mr. Chander Bhan. He has produced several documents in

support of these averments. He further stated that the enquiry has not been conducted in the prescribed manner and that the documents required by the applicant have not been provided by the enquiry officer, nor have the witnesses, as per the request, been summoned by the enquiry officer.

5. Placing reliance on the judgment of this Tribunal in **S.K. Jain v. Union of India** [ATR 1990 (2) CAT 255] and on the judgment of Hon'ble Supreme Court in **P.V. Mahadevan v. MD, T.N. Housing Board** [(2005) 6 SCC 636], the learned counsel submitted that allowing the respondents to proceed with the departmental enquiry at this stage, after the applicant has put in more than 13 years of service, would be prejudicial to his interests. He thus prayed for quashing the DE proceedings and allowing the reliefs.

6. *Per contra*, learned counsel for respondents argued that the applicant has approached this Tribunal prematurely. At the time of filing of the O.A. by the applicant, the enquiry was *in vogue*. He further stated the enquiry officer has since completed the enquiry and submitted his report to the disciplinary authority, which was confirmed by the learned counsel for applicant. A copy of the enquiry officer's report was also placed on record, according to which article of charge No.1 is not proved and article of charge No.2 is proved. The disciplinary authority has not yet taken a decision on the report of the enquiry officer.

Concluding his arguments, the learned counsel stated that the O.A. may be dismissed on the ground of having been filed prematurely.

7. We have considered the arguments of the parties and have also perused the pleadings. The DE proceedings have been started against the

applicant on the ground that he is not the son of deceased Mr. Chander Bhan and that he has furnished forged school certificate in support of his educational qualification. The applicant has alleged several irregularities in the conduct of the enquiry by the enquiry officer. Be that as it may. The fact remains that the enquiry officer has since completed the enquiry and submitted his report to the disciplinary authority. As per procedure, the disciplinary authority is required to send a copy of the enquiry officer's report to the charged official inviting his representation/comments on it. The applicant would have opportunity to bring out any discrepancy / anomaly in the conduct of the enquiry in his representation to the disciplinary authority. He can also cite the legal aspects, including the above cited case laws, to buttress his points in his reply to the disciplinary authority.

8. In the conspectus of the discussions in the foregoing paragraphs, we are of the view that the applicant has approached this Tribunal prematurely and accordingly we feel that the O.A. deserves to be dismissed on this ground.

9. Accordingly, the O.A. is dismissed. Liberty is, however, given to the applicant to approach this Tribunal at an appropriate time, if the concerned disciplinary / appellate authorities take an adverse view against the applicant in the matter.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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