

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 1584 of 2013

Date of order: 5th September, 2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Kallal@ Kallol Kumar Singha @ Sinha,
Son of Sri N.C. Singha,
Aged about 31 years,
By Occupation : Since dismissed from service,
Residing at : D.S. Colony,
Alipurduar Junction, P.O. Alipurduar,
District : Jalpaiguri – 736 123.

.. Applicant

- V E R S U S -

1. Union of India,
Through the General Manager,
North-East Frontier Railway,
Maligaon, Guwahati,
Assam – 781 011.
2. The Divisional Railway Manager,
Alipurduar Junction Division,
N.F. Railway, Alipurduar,
District : Jalpaiguri – 736123.
3. The Divisional Railway Manager (P),
Alipurduar Junction Division,
N.F. Railway, Alipurduar,
District : Jalpaiguri – 736123.
4. The Divisional Signal & Telecom Engineer (DSTE),
Alipurduar Junction Division,
Alipurduar, N.F. Railway,
District : Jalpaiguri – 736123.
5. The Sr. Divisional Personnel Officer,
Alipurduar Junction Division,
N.F. Railway, Alipurduar,
District : Jalpaiguri – 736123.
6. The Sr. Divisional Signal & Telecom Engineer
(Sr. DSTE), Alipurduar Junction Division,
Alipurduar, N.F. Railway,
District : Jalpaiguri – 736123.

[Signature]

7. The Assistant Divisional Signal & Telecom Engineer
(ASTE), Alipurduar Junction Division,
N.F. Railway, District : Jalpaiguri – 736123.
8. The Senior Section Engineer (Signal),
New Coochbehar, Alipurduar Junction Division,
District : Jalpaiguri – 736123,
North East Frontier Railway.
9. The Additional Divisional Manager (ADRM),
Alipurduar Junction Division,
N.F. Railway, Alipurduar,
District : Jalpaiguri – 736123.

.. Respondents

For the Applicant : Mr. K. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed under Section 19 of the Administrative Tribunal's Act, 1985 in second stage of litigation seeking the following relief:-

"(A) Do issue mandate upon the respondents, their men and agents and each of them to forth rescind, recall and/or withdraw:-

- (i) The purported Show Cause Notice dated 30.4.2008 being 'Annexure A-3' hereto;
- (ii) The purported Charge Memorandum dt. 29.7.2008 being 'Annexure A-4' hereto;
- (iii) Purported Enquiry Report dt. 8.6.2011 being Annexure A-6 hereto;
- (iv) Purported order of punishment dt. 26.7.2011 passed by the Disciplinary Authority being Annexure A-8 hereto;
- (v) Purported order of the Appellate Authority dt. 30.12.2011 being Annexure A-10 hereto;
- (vi) Purported order dt. 11.11.2013 purportedly and claimed to have been passed by the Revising authority;
And not to give any or further effect or effects to those purported documents';

(B) Do issue further mandate upon the respondents, their men and agents and each of them to forthwith reinstate the applicant in his past service with all consequential benefits from the date of removal till the date of reinstatement in service with 18% interest on the said total sum thereon;

(C) Do issue mandate upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers and documents



in connection with the instant Disciplinary proceeding against the applicant before this Learned Tribunal for kind perusal and on such kind perusal do conscionable justice to the applicant;

(D) Grant cost of this proceeding in favour of the applicant;

(E) Pass such other or further order or orders, direction or directions, mandate or mandates as may appear to be fit and proper."

2. Heard Ld. Counsel for both sides, perused pleadings and documents on record. Written notes have been filed by the Ld. Counsel to the applicant.

3. The applicant's submissions, as advocated by his Ld. Counsel, is that the applicant was appointed as a Khalasi on 23.6.1998 and that he was issued a show-cause notice on 30.4.2008 on the allegation of procuring employment by fraudulent means. That, thereafter, disciplinary proceedings were initiated against the applicant and the disciplinary authority terminated the services of the applicant and that his appeal was also rejected by the appellate authority.

Challenging the entire proceedings, the applicant filed an O.A. No. 784 of 2012 on the grounds as to whether the disciplinary proceedings have initiated, conducted and concluded according to law.

That, the said O.A. was disposed of directing the applicant to submit a revision petition to the Revising authority, who was also directed to dispose of the same within a specific time frame.

As the Revising Authority did not dispose of the same, an M.A. bearing No. 446 of 2015 was filed consequent to which the Revising Authority passed his orders dated 11.11.2013 and the M.A. was also withdrawn.

The present O.A. has been filed challenging the order dated 11.11.2013 of the Revising Authority.

The grounds based on which the Original Application has challenged the orders of the Revising Authority are as follows:-

- (a) That proper enquiry process was not followed;
- (b) The show-cause notice has pre-determined the penalty of termination;
- (c) No witnesses were included in the enquiry process;

hah

(d) The disciplinary authority was not the competent authority to pass the orders against the applicant;

(e) The disciplinary authority did not apply his mind or analyse the evidence furnished by the applicant in his defence statement;

(f) The disciplinary authority passed the orders on behalf of the appellate authority;

(g) The proceedings were concluded with a delay of nearly 3 years as against the time line of 150 days as per rules.

(h) One Shri Pradip Das, against whom a disciplinary proceeding had been initiated on the same grounds, had, however, not been removed from the service by the respondents.

4. Per contra, the respondents have argued that the applicant was appointed as a Khalasi (Watchman) w.e.f. 24.6.98 in compassionate grounds after voluntary retirement of his father, who was medically decategorised. The minimum qualification of Class VIII was mandatory for appointment to the post of Gr. 'D'.

That, the applicant had submitted his attestation form for verification. The said was sent to the DM/Jalpaiguri and the DM/Jalpaiguri reported that there was no existence of the "Dakshin Jitpur Educational Centre" wherefrom the said certificate has been said to have been issued and, accordingly, on the basis of the fact that he had procured employment with a false certificate, the applicant was charged with major penalty and was removed from service on 2.8.2011. The appellate authority and the Revising authority, finding no irregularity in the removal order, upheld the same.

That, when the respondents had issued the offer letter to the applicant, certain terms and conditions have been incorporated therein which, inter alia, had stated that such appointment was subject to the applicant's passing the prescribed medical examination by an authority/Medical Officer of any of the Indian Railways and on production of his original certificate in support of his

hah

education and satisfactory proof in support of his age such as school leaving certificate from the Headmaster.

According to the respondents, the Original Application, being devoid of merit, was liable to be dismissed.

ISSUES

5(i) Whether the order dated 11.11.2013 had been issued by a competent authority.

(ii) Whether the order dated 11.11.2013 of the Revising Authority is legally sustainable.

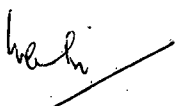
FINDINGS

6.(i) At the outset, the orders dated 11.11.2013 (Annexure 'A-15' to the O.A.) is referred to, which has been passed by the ADRM, APDJ (Additional Divisional Railway Manager, Alipurduar Junction).

The said order had been communicated to the applicant by the Sr. DSTE, APDJ and it is clearly seen that the order of the Revisional Authority has been conveyed as "in reference to the above appeal preferred by you against the above NIP, Revisional Authority (ADRM/APDJ) has passed the following order which reproduced verbatim as under," meaning thereby that the order of the Revisional Authority was only conveyed verbatim by the Sr. DSTE/APDJ.

Herein, we refer to the revisional representation made at Annexure A-14 dated 14.9.2012 by the applicant. The applicant has clearly addressed the said Revisional Application to the Additional Divisional Railway Manager, APDJ and the same authority has passed the revisional orders; hence the applicant having admitted that the ADRM/APDJ is the Revisional authority, cannot turn around and challenge the same in the instant Original Application.

Accordingly, the first issue, namely, that an incompetent authority had passed the orders of the Revisional authority, is set at naught.



(ii) We now proceed to examine the second issue and in that context, the orders of the Revisional authority are reproduced below:-

N.F. Railway

Office of the
Divl. Railway Manager (S&T),
N.F. Railway, Alipurduar Jn.,
Dated : 11.11.2013

No. N/61/8/DAR/Pt.III

To
Shri K.K. Singha,
Ex. Khalasi/S&T/APDJ

Sub: Revision of application dated 14/17.9.2012 of Sri K.K. Singha,
Ex. Khalasi/S&T/APDJ against the order of the Appellate
Authority dated 30.12.2011 affirming the order of Discipline
Authority of removal from service.

Ref: Your appeal dated 14/17-09-2012 to ADRM/APDJ.

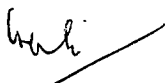
In reference to the above appeal preferred by you against the above
NIP, Revisionary Authority (ADRM/APDJ) has passed the following order
which reproduced verbatim as under:-

"Para-1 to 10 of the revision application of the applicant pertains to the matter of records. Under Para -11 of his revision application, the applicant has made the contention that the Divisional Signal & Telecom Engineer/Alipurduar Junction who is neither his Disciplinary Authority nor his Appellate Authority, rejected his appeal dated 6.9.2011 vide letter dated 30.12.2011, Divisional Signal & Telecom Engineer/Alipurduar Junction had conveyed order of the Appellate Authority i.e. Sr. DSTE/APDJ. Thus, the disposal of the appeal dated 6.9.2011 was in order:

Para 12 & 13 of the above revision application are the matter of the records of Hon'ble CAT/Kolkata.

Para-14 of the revision application is the matter of records of this DAR case proceeding.

In para-15 of his revision application, Shri K.K. Singha, Ex. Khalasi/S&T/APDJ has made contention to establish his innocence that he did not produce any fake certificate issued by the then Headmaster of Dakshin Jitpur Education Centre. In support of his contention, Sri K.K. Singha mentioned further that he obtained a certificate on 10.1.2012 from the Gram Panchayat of the said locality where the school in question i.e. "Dakshin Jitpur Education Centre" existed, which certified that "The school named Dakshin Jitpur Education Centre was running under the control of Gram Panchayat of Dakshin Jitpur (under TLC). The said school existed upto 1996 and after that Government stopped the above Education Centre. All the documents have been destroyed in the devastating flood in 1993. Now there is no existence of the said school."



In para-32 of his revision appeal also, Shri K.K. Singha contended that the qualification certificate issued by the Headmaster of the said school was not fake and false and, therefore, allegation charged against him remains disproved. Again in para-35 of his revision application, Shri K.K. Singh insisted that he is not at all guilty of any offence or misconduct or alleged commission of any offence at any time in any manner whatsoever.

The above contention of Shri K.K. Singha are not convincing because the charges/allegations made against him that at the time of his appointment in Railway as Khalasi in S&T department on compassionate ground, he submitted/produced fake document (i.e. a school transfer certificate issued by Headmaster, Dakshin Jitpur Education Centre, Dakshin Jitpur) as a documentary proof of date of birth and educational qualification, is established due to the following facts:-

(i) Shri Nimai Ch. Singha, Ex. TTE/APDJ father of Sri K.K. Singha while giving his witness as defence witness deposed in his statement dated 17.3.2011 that his son, Shri K.K. Singha studied in Shyama Prasad Vidyamandir/APDJ, he passed annual examination of Class-VIII, promoted to Class-IX and discontinued his study as he fled away and was not traceable for a long time. In his statement, Shri Nimai Ch. Singha, father of Shri K.K. Singha further mentioned that for drawing school certificate from Shyama Prasad Vidyamandir/APDJ he required to clear all dues of this school which was a huge amount and since he was penniless at that time, so he searched for bringing a school certificate from Dakshin Jitpur Education Centre and got the certificate from there. In his above statement, Sri Nimai Ch. Singha admitted that he adopted such unfair means so that if his son was appointed on compassionate ground it would help his family to survive. In his above statement, Sri Nimai Ch. Singha, further confirmed that the certificate he submitted for his son's appointment was ingenuine (i.e. not genuine).

(ii) In his defence brief dated 19.4.2011 addressed to the Enquiry Officer, Sri K.K. Singha has admitted that his father submitted the school certificate from Dakshin Jitpur Education Centre as it was not possible for him to get the certificate issued from Shyama Prasad Vidyamandir/APDJ where he had actually studied.

(iii) The issue i.e. whether "Dakshin Jitpur Education Centre" existed or not, is immaterial because it is an admitted fact that Sri K.K. Singha was not a student of the said school named "Dakshin Jitpur Education Centre" from which school Transfer Certificate in question was obtained.

So far excess time taken in completing/finalizing of this case by the Disciplinary Authority (as contended by Sri K.K. Singha under Para-28 of his revising application) is concerned, it is observed from records that Shri K.K. Singha himself was also responsible for delay in completion of the Inquiry Proceedings as he got the hearing postponed at various occasions for one reason or the other. Moreover, there appears to be no denial of justice of Sri K.K. Singha on account of delay in finalization of the case by the Disciplinary Authority. Had the case been finalized earlier, penalty of 'removal

Wah

from service' would have been imposed on Shri K.K. Singha earlier and the same would have certainly been in the interest of Railway administration but no justice appear to have been denied to Sri K.K. Singha due to absence of such prompt disposal of the case.

The other paras of the revision application were considered not relevant to the charges/allegations against Shri K.K. Singha and contention thereof.

In view of the reasons explained above, the revision application of Sri K.K. Singha, Ex. Khalasi/S&T/APDJ is rejected and penalty of 'REMOVAL FROM SERVICE' without compassionate allowance, stand good.

(V.K. Choudhary)
Sr. DSTE/APDJ"

As stated above, the order has been verbatim reproduced by the Sr. DSTE/APDJ and communicated to the applicant.

Upon summarising the order of the Revising Authority, the following is inferred:-

- (a) As the disciplinary authority had conveyed the orders of the appellate authority, the order of the appellate authority was valid.
- (b) That, the applicant/charged officer had defended his position stating that although the school Dakshin Jitpur Education Centre had actually existed as certified by the Gram Panchayat of Dakshin Jitpur, the said school existed around 1996 and thereafter all the documents have been destroyed in the devastating flood of 1993 and the Government having stopped the said Education centre, there was no existence of the said school when the applicant submitted his defence. The Revisional authority has analysed that such defence has been contradicted by the deposition of the applicant's father, who himself, while deposing during the enquiry had admitted that although his son had actually studied in one Shyama Prasad Vidyamandir, APDJ, he could not obtain a school certificate therefrom on account of pending dues and, hence he obtained certificate from Dakshin Jitpur Education Centre which his son had never attended. Further, the applicant, in his defence brief, had admitted that his father had submitted

hah

the school certificate from Dakshin Jitpur Education Centre as it was not possible for him to get the certificate from Shyama Prasad Vidyamandir, APDJ where he had actually studied and hence from the deposition of the father of the applicant, the revisional authority concluded that the certificate was false inasmuch as the applicant had never studied in Dakshin Jitpur Education Centre, which had been proved conclusively.

(c) In response to the allegations of delay, the Revisional Authority clarified that the delay happened at the stage of enquiry and much of it depended on the attendance and participation of the applicant/charged official in the enquiry proceedings and that natural justice was not denied to the applicant at any stage.

Next we refer to the temporary appointment order issued by the respondents on 23.6.1998 at Annexure A-1 to the O.A. in which the following has been highlighted:

"The other terms and conditions of your service will be the same as stated in this office letter No. E/227/10(a) dated 19.6.1998."

The respondents, in their reply, have affirmed that offer letter had the clear pre-condition that the appointment was "subject to your passing the prescribed medical examination by an authority medical officer of any of the India Railway and on production of your original certificate in support of your qualification and satisfactory proof in support of your age such as school leaving certificate from the headmaster."

The applicant, in his rejoinder, denies having received the same.

As, however, all temporary appointments are issued subject to fulfilment of basic eligibility conditions, such as proof of age, we find no reason to doubt the veracity of respondents' reply.

We also find that the applicant has furnished his school certificate at Annexure A-2 to the O.A. Annexure A-2 to the O.A. does not contain name or address of any school, but states that the applicant was born on 2.2.71, and had



left the said school on 21.12.1985 and it was purportedly issued by the Headmaster of the institution on 16.1.1986. The reference to second school certificate had been made by the appellate authority in his orders dated 13.2.2011, who, while quoting the applicant/charged officer during preliminary hearing, had stated that the applicant had produced his original school certificate issued by Headmaster of one Shyama Prasad Vidyamandir, Alipurduar Junction and, as per the new certificate, the spelling of his surname as well as date of birth differ from the certificate from that of Dakshin Jitpur Education Centre which was submitted when the applicant had applied for the Respondents' service.

The respondents have annexed a copy of his application in Annexure 'R-1' to the reply wherein the applicant has mentioned his date of birth as 2.2.1971 and that the school wherefrom he had studied upto Class VIII was Dakshin Jitpur Education Centre, Bholadabri (Annexure 'R-1' to the reply).

Hence, undisputedly, the applicant, who has signed the application form, has averred that he was born on 2.2.1971 as certified by his school leaving certificate of Dakshin Jitpur Education Centre Bholadabri.

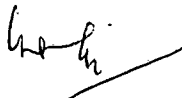
His father's deposition, however, (Annexure A-5 to the OA) noted as follows:-

"5) If your son was reading in S.P. Vidyamandir, Alipurduar J. why a school certificate was submitted by you from Dakshin Jitpur Education Centre to prove his DOB and educational qualification?"

Ans: I did not get salary for about 08 months in 1996-97. For drawing school certificate from S.P. Vidyamandir, I required to clear all dues of this school, which was a huge amount. I was penniless at that time. Finding no means to clear the dues of said school I searched for bringing a school certificate from Dakshin Jitpur Education Centre and got the certificate from there. This certificate I submitted along with the application.

6) Why you adopted such an unfair means?

Ans: At that time, I was not getting salary and it was very difficult to arrange square meals for the members of family and we were passing the day's either half fed or without food. Our survival was at stake. I thought that if my son was appointed on CG it would help us to survive. As such I adopted the same means of submitting a school certificate from other school. It was done only for our survival."



And the applicant's own submission in his defence brief dated 19.4.2011, which is reproduced below:-

"The above submission proves that my father was a seriously ill patient which led to his medical invalidation and subsequent to this he applied for my job on compassionate ground. Submission of application along with school certificate by my father, the medical invalid staff, for my compassionate ground appointment has been proved during enquiry. My father submitted the School certificate from Dakshin Jitpur Education Centre as it was not possible for him to get the certificate issued from Shyama Prasad Vidyamandir, Alipurduar Junction, where I was reading, due to his incapability to clear off the school dues. At that time, I was not available at APDJ. I had to flee away from APDJ to seek any job in order to help my father to keep the pot boiling. Many hungry mouths in our family were avidly fighting for the food in financial crises of my father. In such a grave situation of our family, my father submitted application for my CGA. My father's application opting me for the job was accepted by the Department after due verification and I was given the job of Watchman for which Class VIII pass qualification was not a requirement at that time as per instruction of Railway Board."

Admittedly, the applicant had submitted a false certificate while applying for the job in the Railways on grounds of compassionate appointment. The applicant's father has averred during deposition that he had to get a certificate from Dakshin Jitpur Education Centre so that his son could get compassionate appointment in 1998. As the certificate from the disputed school, however, was issued as early as in 1986, hence it is not understood as to why the father of the applicant could not obtain the genuine certificate from Shyama Prasad Vidyamandir in a span of 12 years namely from 1986-1998, the year of the applicant's appointment.

Hence, the applicant's defence appears to be built on a cumulative process of falsehood and obviously collapses like a house of cards.

Regarding the grounds of delay, the major delay occurred during the enquiry stage largely on account of deferred participation of the applicant. Sufficient opportunities were given to the applicant and as his father too has disputedly admitted, one cannot conclude that the principle of natural justice were vitiated in the process of conduct of disciplinary proceedings and as held by Hon'ble Apex Court in *Forest Deptt. Vs. Abdul Rosul Chowdhury (2009)* 7

hsh

SCC 305 delay is not always fatal to the continuance of an enquiry subject to satisfactory explanation.

The applicant has also alleged that one Shri Pradip Das, also detected as having furnished a false school certificate, was not removed from service.

We find from the enquiry report submitted with respect to Shri Pradip Das (Annexure A-16 to the OA) that the charges were not proved against him. Further, the applicant has not impleaded Shri Pradip Das and hence the original application suffers from non joinder of parties.

In response to the question as to whether judicial review is invoked in the instant matter, the Hon'ble Apex Court in **State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723, B.C. Chaturvedi v. Union of India (1995) 6 SCC 749 and High Court of Judicature of Bombay v. Sashikant S. Patil (2000) 1 SC 416** had enumerated the grounds of judicial review in the context of disciplinary proceedings as below:-

- "(a) Where there has been a violation of the principles of natural justice; or
- (a) The proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (b) The decision is vitiated by considerations extraneous to the evidence and merits of the case; or
- (c) If the conclusion made by the authority is *ex facie* arbitrary or capricious that no reasonable person could have arrived at such conclusion; or
- (d) Other very similar to the above grounds."

7. We find in this matter, the principle of natural justice have not been violated as the applicant had every opportunity to defend himself in the disciplinary proceedings. No extraneous considerations have vitiated the decision making of the respondent authorities. The punishment cannot be said to be shockingly disproportionate given the falsification of the certificate and the proceedings have not been held in violation of statutory provisions prescribing the mode of such inquiry. Accordingly, we hold that there is no merit in the applicant's challenge as because the orders of the Revisional authority have

Handwritten signature

indeed been issued by the competent authority and the revisionary authority's conclusion is based on facts and in adherence to Rules. Thus judicial review is not invoked.

8. Accordingly, the O.A. is dismissed on merit. There will be no order as to costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP