

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A.No. 350/175/2017

Date of order : 10.06.2019

Coram : Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. N. Neihsial, Administrative Member

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Chhotray Hansda, son of Bhadu Bansda, aged about 38 years, residing at Village Nuagram, Post Office-Mahanpur, District-Paschim Midinipur, Pin 832302, West Bengal.

..... Applicant

For the Applicant : Mr. A.Chakraborty, Counsel
Ms. P.Mondal, Counsel

- Versus -

1. **UNION OF INDIA**, through General Manager, South Eastern Railway, Garden Reach Road, Kolkata-700043.
2. **The Chief Medical Director**, South Eastern Railway, Garden Reach Road, Kolkata-700043.
3. **Additional Divisional Railway Manager**, South Eastern Railway, Kharagpur, Paschim Medinipore, 721301.
4. **Senior Divisional Medical Officer, (H&FW)**, South Eastern Railway, Kharagpur, Paschim Medinipore, 721301.

..... Respondents

For the Respondents : Ms. S.Choudhury, Counsel

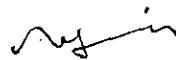
ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman:

The applicant was employed as a Male Safaiwala in the South Eastern Railway. While in employment, he submitted an S.S.C. certificate, said to have been issued by the Board of Secondary

Education, Bihar (for short, the Board) with a request that the same be taken on record. The authorities entertained doubt about the genuinity of the certificate and called for a report. It is stated that the Secretary of the Board informed the respondents that the certificate relied upon by applicant is not genuine. Based upon that, disciplinary proceeding was initiated, by issuing Charge Memo dated 03.10.2013. The applicant denied the charge levelled against him. Thereafter, Disciplinary Authority appointed Inquiry Officer. A report was submitted, and the Disciplinary Authority passed an order dated 04.07.2015 removing the applicant from service without any compassionate allowance. The appeal preferred by the applicant was also rejected through order dated 17.03.2016. The revision petition filed by the applicant was rejected on 10.11.2016. Hence, this O.A.

2. The applicant contends that the S.S.C. certificate submitted by him was only for the purpose of earning promotion in future and that the allegation that it is not genuine is not true. He contends that he was not put on notice by the Board, before they arrived at a conclusion that the certificate is not genuine. He submits that the Inquiry Officer also did not record a definite finding on this aspect and imposition of penalty of removal was not called for. He further submits that the Disciplinary Authority did not apply his mind and passed a cryptic and non-speaking order imposing the major penalty. He has also pleaded that the Appellate and Revisional Authority examined the matter objectively.



3. The respondents filed a reply opposing the O.A. It is stated that on receiving information from the Board, the charge memo was issued and, based upon the report submitted by Inquiry Officer, penalty was imposed, at entry stage, and the prescribed procedure was properly followed.

4. We heard Mr. A.Chakraborty, learned counsel for the applicant, and Ms. S.Choudhury, learned counsel for the respondents.

5. The applicant joined the service of Railways in the year 2012. The S.S.C. certificate said to have been submitted by him much thereafter. The said certificate was not the one, on the basis on which, he got employment. Entertaining a doubt of the genuineness of the certificate, a letter was addressed by the respondents, to the Board. Based upon the report received from the Board, a charge memo was issued to the applicant on 03.10.2013. A reply was submitted by the applicant and, not satisfied with the same, the Disciplinary Authority appointed Inquiry Officer. In his report dated 03.02.2014, the Inquiry Officer gave the findings, as under:

"The preliminary D&A enquiry in connection with Charge Memorandum No.- G/D&A/Med/CH/Tr.saf/13/194 Dtd.-03.10.13 have been completed on 25.01.2014, reportedly after submitting fake secondary school certificate for inclusion in service records to Rly authority. During enquiry charged official made it clear that he had passed the secondary examination in the year - 1996, although he had passed the class VIII examination in the year -1990 as a regular candidate. And the certificate which had produced earlier to the Rly authority was genuine (referred to question no.-19). But admit card which was produced during enquiry as a

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additional document clearly shows that the Roll Code No. is 1181 and Serial no. 364 which is not tallying with earlier pass certificate, i.e.; 01181 & 0364 respectively, which had produced earlier to the Rly authority.

So I the E.O in opinion that before taking any decision on the matter, again clarification this regard may be obtained from personnel department at an important stages which has related with answer no.-20 by charged official."

From the above, it becomes clear that there was no clear finding that the applicant has filed any fabricated certificate. In case, the Disciplinary Authority was of the view that the finding by Inquiry Officer was not correct, it was open to him to order fresh inquiry, or to differ with the finding, duly assigning reasons. He did neither and simply proceeded to impose punishment order. The order dated 04.07.2015, through which it imposed the punishment, reads as under:

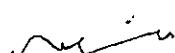
"After having gone through the entire D&A case Inquiry proceeding and finding of the verification letter received from DPO/SER/KGP and Dy. Secy. BSEB, Patna, it is observed that you are guilty of an act of misconduct by violating RSCR 1966 contravening rule 3.1(III) by submitting fake matriculation certificate to the administration for inclusion in your service record.

On the basis of verification letter submitted by DPO/KGP and Dy. Secy BSEB, Patna, I have decided to impose the following punishment against you.

"Removal from Railway service without any compassionate allowance."

You may appeal, if you prefer to do so, to the Appellate Authority i.e. ADRM/KGP within 45 days from the date of receipt of this notice. Appeal should not contain any disrespectful language/statement."

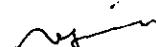
6. Hardly we come across the orders of this nature in the context of imposition of punishment of removal from service, that too of a lower category of employee. For all practical purposes, the



Disciplinary Authority ignored the report of the Inquiry Officer and proceeded against the applicant. The applicant was held guilty of misconduct, even while the report of the Inquiry Officer is silent about that aspect. It was not for the Disciplinary Authority to jump to the conclusion that the applicant is guilty of misconduct contrary to the report of the Inquiry Officer. In addition to that, he was required to take into account, the basic facts of the disciplinary proceeding, nature of charge, the text of the findings of the Inquiry Officer and then the nature of misconduct. None of these components are found in the impugned order. The Appellate Authority and Revisional Authority did not take into account, these aspects and have simply affirmed the order passed by the Disciplinary Authority.

7. We are of the view that the order of removal dated 04.07.2015 is not in accordance with law and is liable to be set aside. Normally, one option available in this behalf, is to remand the matter to Disciplinary Authority for fresh consideration and disposal in accordance with law. However, having regard to the nature of punishment and the passage of time, we are of the view that the applicant can be directed to be reinstated into service but denying him backwages as well as the benefit of S.S.C. certificate.

8. Therefore, we allow the O.A. in part setting aside the impugned order dated 04.07.2015 and directing the respondents to reinstate the applicant to the service but without any backwages. However, the period between the date of removal and date of



reinstatement shall be taken into account for counting the service for retirement benefits. We also direct that the Secondary School Certificate relied upon by the applicant shall not be taken into account for promotion and other benefits unless the applicant satisfies the respondents about the genuinity of the certificate separately. There shall be no order as to cost.

(N.Neihsial)
Administrative Member

(Justice L.Narasimha Reddy)
Chairman

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