

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION Nos.210/00492/2013,  
210/00493/2013, 210/00494/2013, 210/00504/2013  
& 210/00711/2013**

Dated this Tuesday, the 18<sup>th</sup> day of September, 2019

**CORAM: R.VIJAYKUMAR, MEMBER (A)**

**R.N.SINGH, MEMBER (J)**

Shri Suresh Waman Suryavanshi, Age about 52 years,  
Ex. Khalasi, Juinagar, MTP (R), Central Railway,  
R/at Mahadev Nagar, Behind Pencil Factory Compound,  
Ulhasnagar 421 004, District Thane.-Applicant in OA 492/2013

Shri Vijay Shankar Jadhav, Age about 47 years, Ex. Khalasi,  
MTP (R), Juinagar, MTP (R), Central Railway, R/at Malhar  
Apartment, 'B' Wing, 1<sup>st</sup> Floor, Post Dahivali Taluka, Karjat,  
District Raigad. -Applicant in OA 493/2013

Shri Bijoy Bhushan Debnath, Ex. Jr. Typist, MTP (R), Juinagar,  
Central Railway, R/at Omkar Niwas Chawl, Room No.2,  
Near Ashaprem Apartment, Tukaram Nagar, Dombivli (East),  
District Thane 421 201. -Applicant in OA 494/2013

Shri E.Kalamohan, Ex. Jr. Typist, MTP (R), Juinagar,  
Central Railway, R/at Railway Quarter No.RB-II, Room No.11/1,  
Jui Nagar, Navi Mumbai 400 706. -Applicant in OA 504/2013

Shri Ashok Pira Sonavane, Ex. Khalasi, MTP (R),  
Juinagar, MTP (R), Central Railway, R/at Nikand Nagar,  
Ashele Pada, Chawla No.10, Room No.6,  
Ulhasnagar 421 004. -Applicant in OA 711/2013  
(By Advocate Shri V.N.Tayade)

**Versus**

1. The Union of India, Through the General Manager,  
Central Railway, CSTM, Mumbai 400 001.
2. The Dy. Chief Engineer (Const.), 2<sup>nd</sup> Floor,  
Juinagar Station Building, Navi Mumbai 400 705.
3. The Executive Engineer (Const),  
II/Juinagar Station Building, Navi Mumbai 400 705.
4. The Chief Engineer (Const.) (Revisonal Authority),  
MTP, Central Railway, CSTM,  
Mumbai 400 001. - Respondents in all the OAs  
(By Advocate Shri S.C.Dhawan)

**COMMON ORAL ORDER**  
Per : R.Vijaykumar, Member (A)

These applications have been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs in OA No.494/2013 :-

“8(a). That this Hon'ble Tribunal would be pleased to, after examining the legality, propriety and validity of the Orders dated 30/09/2009 passed by the Revisional Authority, quash and set aside the same and consequently direct the Respondents to reinstate the Applicant on his original post with all consequential benefits, including full backwages, increments etc.

8(b). Any other or further order as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the case.”

2. In these batch of cases, five applicants have challenged the orders of the termination of the respondents passed by the Disciplinary Authority on 30.09.2009 (Annexure A-1) and upheld by the Appellate Authority in order dated 12.05.2010 (Annexure A-2) in respect of OA No.494/2013 which is taken as the lead case and orders have also been passed by the Revisionary Authority on 07.10.2011 upholding the orders of the Disciplinary and Appellate Authorities. By consent of the parties, considering that issues, facts and law are identical in all these cases, the batch of

cases have been heard together and the common orders are passed.

3. The facts of the case are that the applicant was issued a charge-sheet dated 07.06.2006 with a single Article of charge as under :-

"ANNEXURE-II  
STATEMENT OF IMPUTATION OF ARTICLES OF  
CHARGES FRAMED AGAINST SHRI BIJOY  
BHUSHAN DEBNATH, JR. TYPIST (ADHOC) OF  
MTP(R) MUMBAI

ARTICLE 1

That the said Shri Bijoy Bhushan Debnath, Jr. Typist (adhoc) on transfer from CPHE/THK, C.Rly to MTP (R) Mumbai by producing I.no.E/KPH/CL.IV/TFR/88 dt. 15.6.90 issued by CPHE/THK. On enquiry with CPHE/THK/C.Rly vide MTP (R) Mumbai's D.O. letter No.MT/E/050/DAR dated 19.7.04, it was replied by APO/CWM's office, MTN vide D.O. letter no.PG/MTN/APO/MISC dated 20.08.04 that Shri Bijoy Bhushan Debnath was never appointed in Thakurli Power House, nor has he ever screened or transferred to MTP/R Mumbai, by CPHE/THK. It clearly indicates that Shri Bijoy Bhushan Debnath, Jr. Typist (adhoc) obtained appointment in MTP (R) Mumbai as a Khalasi by producing fake and fabricated documents.

Sd/-  
(A.V.Kulkarni)  
Executive Engineer/C-II  
XEN (C)  
Juinagar Central Railway."

4. The delinquent applicants filed their reply requesting for quashing and setting aside of the charge memo on the ground of inordinate delay of 15 years and for non-supply of the relied upon documents. In

the above charge memo, the respondents have relied on three documents specified in Annexure III :

(1) CPHE/THK, Central Railway's I.No.E/KPH/CL.IV/TFR/88 dated 15.6.90;

(2) MTP (R) Mumbai's D.O. letter no.MT/E/050 DAR dated 19.07.04.

(3) AOI/CWM's office, MTN vide D.O. letter no.PG/MTN/APO/MISC dated 20.08.04.

5. These comprise RUD 1 which is the alleged transfer order issued by the Thakurli office of the respondents transferring the applicants to the Mumbai office. RUD 2 is a letter of inquiry from the Mumbai office dated 19.07.2004 addressed to the Thakurli office communicating details drawn from Service Register maintained in the Bombay office for the applicants on alleged date of appointment, medical screening to the alleged orders of transfer. The Thakurli office was asked to verify their records and advise the Bombay office whether the applicants had been appointed and subsequently screened on the

recommendations of the Thakurli office prior to alleged transfer orders. RUD 3 is a letter from the Matunga office which refers to the letter from the Thakurli office stating that the said applicant(s) did not figure in the seniority list dated 09/13.11.1990 and further, conveyed that the charged officer was never appointed in Thakurli nor subsequently transferred to the Bombay office. During the inquiry, the respondents conceded that the original of RUD 1-the alleged transfer order and RUD 2-the letter of inquiry, were not traceable and further, could not be produced for the purpose of inquiry. However, all other documents including some additional exhibits have been produced in the course of the inquiry. The Inquiry Officer held that since the basic documents RUD 1 and RUD 2 were not produced in original for the purpose of the inquiry, they would be treated as dead documents and in continuation of this shortcoming, especially the non-production of RUD 1, the alleged transfer order from Thakurli to

Mumbai, the charge against the Charged Officers was not proved. On receipt of the inquiry reports conveying the above opinion, the Disciplinary Authority expressed his disagreement in a note covering of this issues in his letter dated 22.09.2008 and recorded the following reasons :-

“(a). The charge leveled against you is based on RUD-1 i.e. CPHE/THK/C.Rly's letter No.E/KPH/CL/IV/TFR/88 dated 15.06.90 which is fake and fabricated letter. As such it was not possible to provide original copy of the said letter for the prosecution. The Inquiry Officer has ignored that the letter which did not exist at any time, cannot be produced.

(b). Shri D.K.Waghmare, APO of CWM's office, Matunga vide his letter No.PG/MTN/APO/Misc. Dated 20.08.2004 clearly stated that Shri Bijoy B. Debnath, and other 8 employees were never appointed in THK Power House and not screened and not subsequently transferred to other unit to MTP. He has also stated their names were not appearing in combined seniority list of THK Power House made out under letter No. EG/PH/Seniority List dated 9/13-11-1990. The inquiry officer has stated that since charged official (CO) is transferred to MTP on 15.6.90, seniority list dated 13.11.90 is not considered to be relevant as CO was absorbed in MTP on 15.6.90. This contention of the IO is totally incorrect due to following reasons:

(i). MTP (R) was not a permanent organization. No employee was permanently absorbed in MTP (R) and hence no lien was maintained in MTP for any staff. It can be seen that even as on date, the lien of the staff who have been drawn from other units/other railways and working in construction projects, is maintained by their respective parent department/their railways.

(ii). The Office Order No.43 of 1990 circulated

vide letter No.MT/E/066/Pt.II dated 18.6.90 issued by Shri K.Rajiah, the then APO/MTP(R) states that CO is posted in MTP, and does not specify that permanently absorbed in MTP(R).

(iii). Even though employees are transferred from parent department, their lien is maintained in their parent department only. As per APO/MTN's letter quoted above, CO's name is not appearing in the combined seniority list of THK Power House staff.

(c). Shri Rajiah, the then APO(C)MTP who has issued Office Order No.43 of 1990 circulated vide letter No.MT/E/066/Pt.II dated 18.6.90, has been penalized for giving fake appointments by issuing such orders based on fake transfer orders.

(d). Inquiry Officer is silent about the statement submitted by the P.O. stating that "during the course of enquiry, based on available documents/evidences adduced. C.O is failed to produce any concrete evidence of his service rendered prior to MTP Organization, that is at Thakurli Power House, the charge against CO, is substantiated."

(e). Further, CO could not provide any documentary evidence or witness from his side to substantiate that he was working in Thakurli Power House before his transfer to MTP (R).

(f). It is also noticed from the service record that three entries were made on page No.8 of S.R. on the same day as detailed below :-

- a. Appointed as Sub-Khalasi w.e.f. 19.8.87 vide letter No.E/KPH/C IV 88/Yard Office (date of letter is not maintained).
- b. Passed medical examination vide medical fit certificate No.271031 dated 13.04.89 by Byculla DMO C.Rly.
- c. Screened and declared suitable for absorption in a regular Class IV post in Gr. Rs.196-232 / Rs.750-940 (RPS) treated as temp as per CPHE's letter No.E/KPH/C/ IV 88/Screening dated 28.12.89.

From the above, the following points are noticed:

- (i). Entries of three different dates, have been made on one day without endorsing any date on signature,

whereas the first page of the service record has been signed on 19.8.87. The first entry mentioned above (a) should have been made on the same day but was made alongwith after the date of 28.12.89. It is also noticed that the 3<sup>rd</sup> entry (c) is also made on page No.10 of the file as detailed below:-

- a. Screening for suitable absorption in Class IV post in Gr. Rs.196-232 (RS)/ 750-940 (RPS) treated as temporary staff vide this office letter No.E/KPH/C IV/88 Yard Office dated 27.11.89.
- b. Declared screening result for suitable absorption in regular Class IV post in CPHE/THK office in Gr. Rs.750-940 (RPS) w.e.f. 28.12.89.

Signature against these two entries appears to be different from the signature on page No.8 and of first page of BIO-DATA. In the entry made on page 8, it is mentioned that the CO has been screened for absorption in regular Class IV post in Gr. Rs.196-232 / 750-940 (RPS) I treated as per letter dated 28.12.89 whereas as per entry on page 10, CO is treated as temporary as per letter dated 27.11.89.

(ii). Medical fitness of the staff is done before appointment whereas in this case as per the entries made in S.R., it is seen that C.O. has been appointed w.e.f. 19.8.87 as Sub-Khalasi and the medical examination has been done on 13.4.89.”

6. The applicants have replied to the disagreement note by their respective replies furnished around 06.10.2008 reiterating the criticality of non-production of the original documents in RUD 1 and supporting the Inquiry Officer's report. They have also alleged commission of offences under various Sections of the

penal code by the Disciplinary Authority. Following receipt of this reply, the Disciplinary Authority considered the matter in detail and passed orders removing the applicant from service.

7. The learned counsel for the applicant challenges the order of removal passed by the respondents on the grounds that these orders were passed without any evidence and therefore, they are liable to be quashed. Further, the learned counsel for the applicant refers to another employee Shri Ramakant Jagdish Pandey who is stated to have been similarly transferred and proceeded against. The Inquiry Officer had in his case, found that the charge was not proved and such report of the Pandey had, however, been accepted by the Disciplinary Authority. In this regard, he has placed on record the order dated 18.01.2018 of the respondents. However, it is worth-noting that the charge sheet, Inquiry Officer's report or any other documents relevant to the said Shri Pandey does not form part of the pleadings before us. The

facts of the case of said Shri Pandey has also not been pleaded in the present OA. No other grounds have been urged by the learned counsel for the applicant except to rely on the judgment of the Hon'ble High Court in **Union of India and others Vs. C.M. Amrute and another**, 2005(4) Mh.L.J. 960.

**8.** The learned counsel for the applicant also relies on the judgment of the Hon'ble High Court of Bombay decided on 02.12.2016 in **Union of India Vs. G.Kulasekhara** and contends that when the basic evidence supporting the imputation against the delinquent have not been produced in the inquiry or copies given to the delinquent, it was clear that there was no foundation to show that the charges against the delinquent were proved.

**9.** The learned counsel for the respondents was heard in response to the notice and the respondents have filed a detailed reply and have disputed the claims and grounds of the applicants.

**10.** The learned counsel for the respondents has also filed written arguments along with

copies of various judgments, referred and relied on behalf of the respondents.

**11.** The learned counsel for the respondents submits that although the Inquiry Officer has held that the charges were not proved, he has not correctly appreciated the evidence produced on record and he has also ignored the fact that during the inquiry, the delinquent applicants have not disputed the veracity of the verification, a copy of which relied by the prosecution and has been executed during the examination and cross examination of the prosecution witnesses. He has argued that after considering the report(s) tendered by the Inquiry Officers, the Disciplinary Authority have found tentative reasons for such report and has given dissenting notes to the delinquent applicants as noted herein-above.

**12.** The learned counsel for the respondents also relies, on inter alia, on the decision of this Tribunal in OA No.150/2008 decided on 23.08.2012 in **R.Annamalai Vs. Union of India and others**, wherein it was held that

"the learned counsel on behalf of the Applicant was asked to show the order under which the Applicant was initially appointed in the railways as a Cleaner. However, no such order was produced by the applicant before us. Further, on being asked as to when the Applicant had joined as casual labour, still we got no response from the learned counsel on behalf of the Applicant. It is apparent that no appointment can happen in vacuum and that the Screening Test for appointment of Khalasi was for screening of the existing Railway employees who were being considered for posting as Khalasis against the two existing vacancies. Since the applicant has not been able to establish that the Applicant was appointed through proper mode of selection by any competent authority under the Railways, the Respondents initiated appropriate proceedings against the applicant which culminated in the orders passed by the Disciplinary, Appellate and Revisionary authorities removing the applicant from service".

**13.** Further, he refers to the decision of this Tribunal in OA No.511/2010 decided on 04.09.2012 in **S.Maniyakaran Vs. Union of India and Others** wherein it was held that "it was incumbent on the applicant to establish in the inquiry that he had worked on casual basis and produce document for the same and also prove that he was legally appointed as claimed by him.

**14.** Hon'ble CAT has observed that "the Applicant had failed to produce any evidence or any document like letter of appointment as casual worker or payslip, registers, documents to establish that the Applicant was appointed as Casual worker and that the applicant had appeared before the Competent Authority for screening in accordance with procedures prescribed and was regularly appointed."

**15.** He also refers to the decision of the Hon'ble Apex Court in **Krishna Bhayya Jala Nigam Ltd Vs. Mohd. Rafi** in Civil Appeal No.2895/2009 wherein it was held that "the onus to prove over 240 days service is on the workman which he failed to prove."

16. On this aspect of burden of proof, he relies on Civil Appeal No.14263/1996 decided on 05.11.1996 by the Hon'ble Apex Court in **Orissa Mining Corporation and Anr Vs. Anand C. Prusty** wherein it was held that "... the position with respect to burden of proof is as clarified by us hereinabove viz that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. The burden of proof may be shifted to the delinquent officer, depending upon his explanation."

17. He also refers to a catena of judgments on the aspect of the jurisdiction of this Tribunal in respect of such inquiries wherein the Tribunal is limited to the aspect of judicial review and cannot become an Appellate Authority in this regard.

18. The learned counsels for the applicant and the respondents were carefully heard, and pleadings and records have been perused.

19. At the outset, it is necessary to record that this Tribunal is examining this application by way of judicial review and cannot substitute itself as an Appellate Authority in this matter. The Tribunal is not empowered to re-appreciate the evidence and arrive at its own conclusions for the proof of charge. This Tribunal is not required to go into the adequacy or reliability of evidence as laid down by the Hon'ble Apex Court in **B.C.Chaturvedi Vs. Union of India, (1995) 6 SCC 749**. The Hon'ble High Court of Madras dwelt on this issue of challenges made to orders passed in disciplinary proceedings and discussed after the law as laid down by the Hon'ble Apex Court in a catena of cases and followed by various Courts. The Hon'ble High Court of Madras identified and explicated the principle of law in its judgment dated 07.10.2015 in Writ Petition No.31736/2015 reported in **K.Nagarajan Vs. The Central Provident Fund Commissioner & Others**. The Hon'ble Court referred to the judgment of the Hon'ble Apex Court in **Union**

of India Vs. P. Gunasekaran reported in  
2015 (2) SCC 610 which is held as follows:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from teaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). Interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). Go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based,
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

Finally, in its judgment in the case, the Hon'ble High Court of Madras held:

“19. Though the learned counsel for the writ petitioner submitted that it is the statement of Mr.K.Rajapandian that nobody guided him, but the attempt was his own brain child, from the answers, extracted supra, it cannot be contended that the writ petitioner had not played any role in the attempt to open a false account, in the name of Mr.L.Krishnasamy and that there was no intention to fraudulently withdraw the amount/pecuniary gain of Rs.4,94,00/-, which was standing in the credit of Mr.L.Krishnasamy. Statement/admission of the writ petitioner itself, is more than sufficient to arrive at a conclusion, on the misconduct alleged. He has also accepted the payment of Rs.500/- from Mr.K.Rajapandian, to open the Bank account, in the name of Mr.L.Krishnasamy, Provident Fund Account Holder.

20. Statement of imputations also reveal that the photograph of Mr.K.Rajapandian, has been affixed in the application form, submitted to open the account, in the name of Mr.L.Krishnasamy. Thus, knowing fully that Mr.K.Rajapandian and Mr.L.Krishnasamy, are different persons, the petitioner had filled up the form, with the photograph of Mr.K.Rajapandian, affixed in the form. For the specific question to PW.1, Assistant Director (Vigilance), as to whether, there was any possibility of affixing the photograph at a later stage,

without the knowledge of the petitioner, PW.1, has categorically stated that there was no possibility of affixing the photograph, after the signature of the Bank Manager, on the bank opening form and that the application form, would not be accepted, if it is not completed in all respects. Moreover, PW.1, has stated that the Manager has to identify and satisfy himself before giving orders for opening the bank account.

21. Though re-appreciating of evidence is not permissible by the Courts/Tribunals, yet analyzing the evidence of the writ petitioner and that of PW.1, Assistant Director (Vigilance), South Zone, the attempt on the part of Mr.K.Rajapandian, to withdraw the Provident Fund amount from the Provident Fund Account Holder, Mr.L.Krishnasamy, is clear, for which, the petitioner has lent his active support with a clear knowledge that Mr.K.Rajapandian, is not the Provident Fund Account Holder, Mr.L.Krishnasamy. He cannot be a brain child, but certainly there are sufficient materials to hold that he has connived with Mr.K.Rajapandian. Submissions of the writ petitioner and the attempt to wriggle out the misconduct, is nothing but to dump a pumpkin in a morsel of food. [KG g{rzpf;fha;ia nrhj;jpy; kiwf;f Koa[kh (Tamil Proverb)]

23. Going through the material on record, it could be noticed that all the statutory authorities have applied their mind to the evidence and findings recorded, considered the defence and passed reasoned orders, in conformity with the service rules and principles of law, which do not require any interference. Decisions relied on by the Central Administrative Tribunal, Madras Bench, lend support to its reasoned conclusion. While confirming the finding of the misconduct, taking on record, the instructions of the Railway Board in RBE No.48/2010 and the representation, dated 24.05.2012, the Central Administrative Tribunal, Madras Bench, at Paragraph 22, has passed the following orders:

It is not known whether these were general instructions on the subject or these were applicable only to the Railways. The Central Provident Fund Commissioner, EPFO/Revisional Authority is directed to verify and if the instructions issued in the aforesaid RBE were applicable to other Departments/Organisations of GOI also, he should re-examine the case and if he considers that a modification is warranted in the penalty, he should

issue on the revision petition, in supersession of his earlier, dated 25.03.2011, a revised order having regard to the representation of the Applicant, dated 24.05.2012. Till such time, the present order of the Revisional Authority will stand. This exercise should be completed preferably within four months from the date of receipt of a copy of this order.

24. In the light of the principles of law applied and on the facts and circumstances of this case, we are not inclined to accept the contentions of the writ petitioner. The finding of the disciplinary authority, confirmed by the appellate/revisional authority and sustained by the Central Administrative Tribunal, Madras Bench, cannot be said to be perverse or it is a case of no evidence. On the contrary, it is in conformity with the principles of preponderance of probability. There is absolutely no need to reverse the same. Consequently, the directions issued by the Central Administrative Tribunal, Madras Bench, are sustained.”

20. In the present case, the basic charge against the applicant is that he was never appointed to service and he joined the service at the Bombay office (MTP) on the basis of the alleged transfer order issued by the Thakurli office of the respondents by that very statement. In regard to this aspect, the respondents have argued that there was no appointment and therefore, the question of issuing a transfer order could not arise and therefore, the purported transfer orders in respect of the applicants transferring them from Thakurli office to Mumbai Office of the respondents

were nothing but fake. Drawing on this argument, even if the original file with the Bombay office containing the said purported letter of transfer had been produced, the corresponding proceedings and file from which they had allegedly been issued in the Thakurli office not being available, its underlying basis was not clearly available and therefore, the evidence itself does not help the applicant in any manner whatsoever. It is also not in dispute that the officials who had purportedly issued the transfer order in respect of the aforesaid applicants from Thakurli office to the Mumbai office on the basis of which the applicants have joined the Bombay office have been proceeded against in departmental inquiry and after proper inquiry against them, the surviving two officials have been removed from service.

**21.** It is also noted from the inquiry that RUD 3 was produced and verified and the applicant was extended the opportunity for cross-examination on this letter. The

learned counsel for the applicant has argued that this seniority list was prepared after the alleged transfer of the applicant from Thakurli to Mumbai and that explains how their names were found missing in the seniority list. However, as noted by the Disciplinary Authority in his disagreement note that even though employees were transferred to various departments, their lien is maintained in the parent department and therefore, it was necessary for the name of the Charged Employees to have found place in the combined seniority list of Thakurli Power House. In the absence of the name of the applicant in that seniority list, it is only open for the applicants to bring attention to and refers to previous orders of the respondents appointing them or at the very least, referring them for medical screening. Therefore, the burden of proof now falls upon each applicant to rebut this evidence which goes against their claims and they were given due opportunity but they failed to take any steps in that

direction and fell back to questioning the reliance on some correspondence. Even considering the need for substantial justice, this Tribunal has repeatedly inquired from the learned counsel for the applicants and even called upon one of the applicants who is present in Court on whether he has evidence to produce which can support his claim that at any point of time prior to their purported orders of transfer from Thakurli to Mumbai, they were appointed, screened and served. However, they have failed to produce such evidence even at this late stage.

**22.** As we have discussed in the foregoing paragraphs, the critical document in these proceedings supporting the allegations of respondents and questioning the factum of appointment of the applicants is the document at RUD-3. The Inquiry Officer was apparently distracted by the non-production of originals of RUD-1 and RUD-2 which has enabled the applicant to claim that the proceedings were based on "no evidence" whereas there is evidence by way of RUD-3

that holds against them and which they have been unable to rebut as also noted by the Disciplinary Authority.

**23.** We also note from the procedure followed in the disciplinary inquiry, that full opportunity was provided to the applicants in defending themselves against the charges leveled against them and we also do not find violation of any procedure, law or principles of natural justice nor are these urged by the applicants.

**24.** By way of MA No.867/2013, the applicant in OA No.711/2013 has prayed for condonation of delay of 596 days. Although the respondents have objected to the claims of the applicant by reference to their reasons, as we have already gone into the merits of the claims of the applicants in the aforesaid OA and also keeping in view the facts and circumstances of the removal of the applicants and their pleas in the MA, we allow the said MA in OA No.711/2013.

**25.** In view of the facts, discussion and law as noted above, we do not find merit in

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210/00494/2013, 210/00504/2013 & 210/00711/2013

the aforesaid OAs. Accordingly, they  
deserves to be dismissed and they are  
dismissed. Ordered accordingly. No order  
as to costs.

*(R.N.Singh)*  
*Member (Judicial)*

*(R.Vijaykumar)*  
*Member (Administrative)*

*kmg\**

*JP*  
11/10/11