

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 06th August, 2010*

+ **W.P.(C) 307/2009**

UOI & ORS. Petitioners
Through: Mr.Kumar Rajesh Singh, Advocate.

Versus

RAJESH KUMAR Respondent
Through: Mr.A.K.Behera, Advocate and
Ms.Meenu Mainee, Advocate.

W.P.(C) 11275/2009

UOI & ANR. Petitioners
Through: Mr.Kumar Rajesh Singh, Advocate.

Versus

SURESH CHANDRA VERMA Respondent
Through: Mr.A.K.Behera, Advocate and
Ms.Meenu Mainee, Advocate.

W.P.(C) 11637/2009

UOI & ORS. Petitioners
Through: Mr.Kumar Rajesh Singh, Advocate.

Versus

R.P.CHAUHAN Respondent
Through: Mr.A.K.Behera, Advocate and
Ms.Meenu Mainee, Advocate.

W.P.(C) 11653/2009

UOI & ORS. Petitioners
Through: Mr.Kumar Rajesh Singh, Advocate.

Versus

DIN DAYAL PANDEY Respondent
Through: Mr.A.K.Behera, Advocate and
Ms.Meenu Mainee, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Our apology for deciding the four captioned writ petitions by a common judgment and order is that same counsel appear for the contesting parties and that the respondents in all the writ petitions who have succeeded before the Central Administrative Tribunal were some what similarly situate inasmuch as all of them were engaged as Mobile Booking Clerks under a scheme of the Railway Board promulgated in the year 1973; the object whereof was to give employment to the wards of railway employees by requiring them to render assistance at the railway stations when extra work was needed and help the regular staff in booking/reservations and passenger traffic. An assurance was held to them of being regularly absorbed after three years. The scheme was withdrawn on 17.11.1986 which was challenged before the Central Administrative Tribunal which granted relief; requiring the services of the disengaged Mobile Booking Clerks to be re-engaged. The decision of the Tribunal was upheld by the Supreme Court.

2. It is the claim of the four respondents in the four writ petitions that Rajesh Kumar was engaged as a Mobile Booking Clerk on 17.2.1984, R.P.Chauhan on 28.4.1983, S.C.Verma on 2.11.1983 and D.D.Pandey on 17.2.1984. Since

the railways lost the battle pertaining to the railway board circular dated 17.11.1986 in the Supreme Court, on 6.2.1990 the Railway Board issued a general order directing that all those who had worked prior to 17.11.1986 under the Railway Board Scheme of 1973 should be re-engaged and on completing 3 years' service should be regularized as Clerks. Accordingly, on different dates in the month of April 1991 the four respondents were re-engaged as Mobile Booking Clerks. This was done pursuant to the respondents submitting certificates issued by the respective competent authority at the railway station where they claimed to have worked as Mobile Booking Clerks when their services were disengaged.

3. Immediately thereafter, on different dates, but in the year 1993, charge-sheets were issued to the four respondents alleging that the work certificate submitted by them when they were re-inducted in service was a forged and a fabricated document. The said charge-sheets were withdrawn on some technical grounds by the railway authorities soon after they were issued; the withdrawal being in the year 1993 itself.

4. The respondents were happy. They thought that everything was over. They continued to work as Mobile Booking Clerks and their services were regularized.

5. A thunder-bolt struck them when on 25.3.1998 charge-sheets were issued to all of them, once again alleging that they obtained re-engagement in the year 1991 on the basis of forged and fabricated certificates. Needless to state, the respondents denied the charge.

6. Four inquiry officers, pertaining to the four charge-sheets, one each against the four respondents, were

nominated with a mandate to record evidence and submit a report.

7. Since the certificates submitted by the respondents were merely a memorandum of the past i.e. were recording a certification that the respondents had worked as Mobile Booking Clerks: Rajesh Kumar at Sitapur Railway Station; S.C.Verma at Balrampur Railway Station; R.P.Chauhan at Gorakhpur at Railway Station and D.D.Pandey at Uska Bazar Station, the respondents, in our opinion very justifiably, moved an application before the Inquiry Officer praying that attendance registers at the respective railway stations be summoned which would prove their attendance and duty hours; supplementary bill registers with bills and pay books which would prove the work actually done by them and Station diaries be produced by the department. They specifically pleaded that the said record was the permanent and positive record and conclusively would have proved that they worked as certified in the certificates submitted, which were alleged to be false and fabricated certificates.

8. The department responded expressing inability to produce the record stating that it could not be located.

9. The four inquiries proceeded. Photocopies of the relied upon documents by the department were not got exhibited being not proved from any witness. The department examined a vigilance officer in each inquiry who simply stated that he had no basis to justify what he was saying but simply said that his vigilance investigation revealed to him that the respondents had not worked as Mobile Booking Clerks as claimed by them and as reflected in the certificates produced by them.

10. It is important to highlight that a second witness was examined in the inquiry against Rajesh Kumar, D.D.Pandey and R.P.Chauhan; being the one who had issued the certificate in favour of the said three persons. The said witness deposed that he had indeed issued the certificate to them and that the certificate was issued after verifying the record and that the same was neither a forged nor a fabricated document. Pertaining to the inquiry against Shri S.C.Verma, since the department did not produce the officer under whose signature the certificate issued in his favour was submitted, S.C.Verma sought a specific direction that Shri V.N.Singh, the Station Superintendent who had issued the certificate to him be summoned. But, Shri V.N.Singh was never summoned.

11. The inquiry officer conducting the inquiry pertaining to the charge-sheet issued to Shri R.P.Chauhan exonerated R.P.Chauhan. The other three inquiry officers indicted the other three respondents by relying upon photocopies of the unproved documents filed by the department.

12. The Disciplinary Authority proceeded to inflict the penalty of dismissal from service. It be noted that this was preceded by a note of disagreement being supplied to R.P.Chauhan.

13. It be noted that the contentions of the respondents that they could not be indicted on the basis of unproved documents and the contention of respondents D.D.Pandey, Rajesh Kumar and R.P.Chauhan that the officers who had issued the certificates in their favour had affirmed the correctness of the certificate and this was overlooked by the inquiry officer was not even noted by the disciplinary authority. The plea of S.C.Verma that the officer who had

issued the certificate to him, being not summoned, had vitiated the inquiry against him was ignored. Their plea that the belated inquiry had seriously prejudiced them at the defence for the reason the contemporaneous documents which were prepared and proved they having worked as Mobile Booking Clerks were admittedly not available. All the pleas have apparently being negated, albeit without any discussion in the order levying penalty against them. It be noted that the Disciplinary Authority has referred to certain statements made by some persons during a preliminary inquiry held at the back of the respondents, ignoring that said persons never appeared as a witness at the inquiry before the inquiry officer after the charge-sheets were served upon the respondents. The appeals filed by the respondents were rejected. Revisions filed were also rejected. All of them proceeded to the Central Administrative Tribunal and marching under different banners filed four original applications praying that the order dismissing them from service be set aside and they be taken back in service with all consequential benefits.

14. It would be apparent to the reader of this judgment that the judicial mind would hold in favour of the respondents, if the facts noted herein above are correct, which indeed they are as indisputably conceded to.

15. The Tribunal has allowed the application filed by the respondents on the reason that the documents relevant to the defence were not brought on record; the Disciplinary Authority could not rely upon statements made during preliminary inquiry without the maker of the statement deposing as a witness before the inquiry officer; and unproved documents could not be relied upon.

16. While allowing the applications filed by the respondents the Tribunal has permitted the petitioner to resume the inquiry from the stage after service of the charge-sheet by bringing on record the documents production whereof was sought by the respondents, permitting the petitioner to prove the documents relied upon by the petitioner and needless to state by examining the witnesses whose statements were recorded during preliminary inquiry.

17. The petitioner has challenged the said order being the order dated 19.9.2008 passed in favour of Rajesh Kumar; the order dated 23.3.2009 passed in favour of S.C.Verma; the order dated 28.5.2009 passed in favour of D.D.Pandey and the order dated 25.3.2009 passed in favour of R.P.Chauhan, all of which are premised on the same reasoning. Needless to state, the first decision dated 19.9.2008 is the basis for the subsequent three decisions.

18. The only worthwhile submission which could be made by learned counsel for the petitioner was that it was for the respondents to prove that the certificate submitted by them was not a forged and a fabricated document.

19. We are afraid, the onus has to be on the petitioner. That apart, qua Rajesh Kumar, D.D.Pandey and R.P.Chauhan the officer who had issued the certificate had appeared before the Inquiry Officer and had deposed in their favour and qua them it could not be alleged that they submitted a forged or a fabricated certificate. Of course, whether the certificate authenticated a wrong fact is a different matter. Qua S.C.Verma, what more could he do other than require the Inquiry Officer to summon the Railway Officer who had issued the certificate to him.

20. We would be highlighting one fact, being that, a list was successfully brought on record, from the record of the petitioner, authenticity whereof is not in dispute, as per which list the names of all the respondents stand recorded as persons who had worked as Mobile Booking Clerks. The said list containing the names of 85 persons records the names of three respondents at serial No.10 (D.D.Pandey), serial No.70 (S.C.Verma) and serial No.81 (R.P.Chauhan).

21. Thus, we dismiss all the writ petitions.

22. We would like to bring to the notice of the Competent Authority of the petitioner that though permission has been granted to the petitioner to recommence the inquiry in all the four cases, but the same has to be upon the condition that the documents production whereof has been sought by the respondents are brought on record. In para 7 above we have noted what those documents were and indeed we find them to be most relevant documents for they contain the contemporaneous memorandum of the events i.e. proof of what stands certified in the certificates produced by the respondents. It would be a futile exercise to conduct an inquiry without producing the said documents. If they are available only then it would be advisable to hold an inquiry, failing which the Competent Authority should consider the desirability of closing the matter as it is.

23. We wish to highlight that the instant writ petitions highlight the desirability of speedy inquiries and prompt issuance of charge-sheets when a misdemeanor is alleged. As noted above, the certificates, authenticity whereof has been disputed by the petitioner, were filed by the respondents in the year 1991. The charge-sheet in respect whereof the petitioner

seeks to nail down the respondents was issued in the year 1998, notwithstanding the allegation of the petitioner that it detected the misdemeanor in the year 1993 when charge-sheets were issued, but were withdrawn on some technical infirmities therein. What has happened is that in the meanwhile, relevant record has gone missing.

24. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 06, 2010
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