

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.01.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN

and

The Honourable Mr.Justice V.PARTHIBAN

W.P.No.6714 of 2015

1. The Union of India,
rep. by the General Manager,
Park Town,
Southern Railway,
Chennai-600 003.

2. The Chief Rolling Stock Engineer,
Park Town,
Southern Railway,
Chennai-600 003.

3. Additional Divisional Railway Manager,
Chennai Division,
Southern Railway,
Chennai-600 003.

4. Senior Divisional Mechanical Engineer,
Chennai Division,
Southern Railway,
Chennai-600 003.

.. Petitioners

versus
सत्यमेव जयते

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

2. T.Munuswamy

.. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the entire records of the first respondent in OA 1316 of 2011, quash the order dated 08.08.2014 passed therein.

For Petitioners : Mr. A.P.Srinivas

For 2nd Respondent : Mr.R.Ramesh

R1 : Tribunal

ORDER

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.1316 of 2011 dated 08.08.2014 filed by the second respondent herein, disposing of the original application with the following observation in para 21 of the order:

"21. In the above three cases, the facts and circumstances were different and these are not applicable on all fours to the facts in the instant OA. However, applying the spirit of the judgments in the above cases and considering the long passage of time which elapsed when the matter was reopened and the fact that the initial appointment was not irregular with reference to the actual educational qualification possessed by the Applicant although the submission of false School Transfer Certificate might give the Applicant undue advantage later in promotion, the penalty imposed by the Disciplinary Authority is unduly harsh and disproportionate to the misconduct. The concerned Disciplinary Authority is accordingly directed to pass order afresh in supersession of the impugned orders in No. P(A) 90/2009/545 dated 21.07.2009, (2) M/CON/M/1459 dated 25.09.2009 and (3) M/CON/M/1459 dated 22.03.2010 passed by the 2nd Respondent, 3rd Respondent and 4th Respondent respectively, imposing on the Applicant a penalty other than dismissal or removal from service, like compulsory retirement or any other penalty."

2. For the sake of clarity, the parties are herein after referred to as 'the applicant' and 'the respondents' as narrated before the learned Tribunal.

3. The applicant herein has joined the Southern Railway as Khalasi in the year 1984 and while in service, the applicant submitted School Transfer Certificate issued by the Government High School, Nagavedu stating that he had studied upto IX Standard. When the certificate was subjected to verification, it was found that it was not issued by the Government High School,

Nagavedu and on further inquiry, it was found that he had studied only VI Standard in different School. In view of the above conduct of the applicant, a charge memorandum was issued on 29.08.2007 charging the petitioner that he had submitted a bogus school certificate at the time of his employment and an inquiry was conducted into the charges and the same were held to be proved by the inquiry report dated 30.3.2009. Based on the said inquiry report, the Disciplinary Authority, the second respondent herein, dismissed the applicant from service by order dated 21.07.2009 which was also confirmed by the Appellate Authority on 25.09.2009 which was further confirmed by the Revisional Authority by order dated 22.03.2010.

4. Aggrieved by the above orders, the applicant approached the learned Tribunal.

5. The Original Application was resisted by the Railways by filing a detailed counter statement, refuting the contentions raised by the applicant including that for appointment to the post of Khalasi, no minimum qualification was required and the applicant was not required to produce any certificate and further, extreme penalty of dismissal from service was not disproportionate to the gravity of the alleged misconduct committed by the applicant.

6. The fact that no minimum qualification was required for the appointment to the post of Khalasi, was admitted by the Railways in the counter affidavit filed by them.

7. The learned Tribunal, after taking note of the submissions, has disposed of the original application with a direction that the applicant may be imposed with a penalty other than dismissal or removal from service, like compulsory retirement or any other penalty. The learned Tribunal was constrained to pass the direction interfering with the quantum of penalty imposed on the applicant as it was guided by the fact that the initial appointment of the applicant was not irregular and the issue as regards the validity of the certificate cannot be reopened after a passage of considerable length of time. The Tribunal also was of the view that in the circumstances of the case, the penalty imposed was undoubtedly harsh and disproportionate to the misconduct committed by the applicant.

8. The respondents, having not satisfied with the direction passed by the learned Tribunal, are before us in this Writ Petition.

9. Mr.A.P.Srinivas, learned counsel appearing for the petitioner reiterated the submissions put forth before the learned Tribunal. the counsel for the 2nd respondent employee

Shri R.Ramesh contended that once it was found that the applicant did not get any advantage by producing so-called bogus school Transfer Certificate, the same cannot be put against him and the same cannot be the subject matter of major penalty proceedings. He further contended that by virtue of long service and seniority, he may get promotion as Helper and then to Technician and therefore, the entire disciplinary action initiated against him was misconceived.

10. On the other hand, the learned counsel appearing for the Railways contended that though initially at the time of recruitment, no minimum qualification was prescribed, however, for appointment on promotion to the post of Technician, minimum qualification was required and therefore, the school certificate produced by him stood advantageous to the applicant.

11. We gave our anxious consideration to the submissions made by the learned counsel appearing for the parties and also perused the materials on record, pleadings and the orders passed by the learned Tribunal.

12. It is admitted fact that at the time of his initial appointment to the post of Khalasi, there was no minimum educational qualification and therefore, the conclusion of the Tribunal that initial appointment was not irregular cannot be held to be invalid. Moreover, the applicant being a last grade servant, probably was not aware of the legal consequences that may arise on producing such bogus Transfer Certificate. According to him, though no minimum qualification was required, the same was produced on the advice of his well wishers. Even as to the proportionality of the punishment, it could be seen that once the initial appointment was held to be valid, de hors production of the Transfer Certificate in question, the disciplinary action need not have resulted in imposition of extreme penalty of dismissal from service. Therefore, the learned Tribunal, rightly disposed of the Original Application with a direction to impose any other penalty other than dismissal or any other punishment.

13. We have considered all the circumstances and the facts as stated above. The inevitable conclusion would be that the initial appointment earned by the applicant was not being irregular and we were also informed that next promotion to the post of Helper was also not invalid as no minimum qualification was required. Therefore, we deem it necessary and in the interests of justice, to direct the appointing Authority, Railways to pass orders reinstating the applicant by appointing him in the post of Khalasi or any other post from the date of order of his dismissal from service which carries no minimum educational qualification requirement with all attendant

benefits. The above said exercise shall be completed by the respondents, within a period of three months from the date of receipt of a copy of this order. The order passed by the learned Tribunal is modified to the above extent.

The Writ Petition is disposed on the above terms. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SUK

To

1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

+1cc to Mr.R.Ramesh, Advocate SR.No.558
+1cc to Mr.A.P.Srinivas, Advocate SR.No.1565

W.P.No.6714 of 2015

SSI (CO)
GN(10/04/2017)

सत्यमेव जयते

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