

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.3365 OF 2014

Jagdish Chandra Sitaram	)
Ex-Mechanical Fitter-III	)
working under Senior DEE (TRS-O)	)
Upyard-Kalyan Central Railway	)
Electric Loco Shed, Kalyan – Thane	)
R/o. Golai Devi Nagar Chawl,	)
Beside Mahesh Dhanya Bhandar,	)
Khare Gaon, Kalwa (E)	)
Thane-400 605.	)... Petitioner

VERSUS

- | | | |
|----|---------------------------------|------------------|
| 1. | Union of India |) |
| | Through General Manager, |) |
| | Central Railway Headquarters |) |
| | Office, Mumbai-CST, |) |
| | Mumbai-400001. |) |
| 2. | Divisional Railway manager |) |
| | Central Railway Mumbai Division |) |
| | CST, Mumbai-400001. |) |
| 3. | Senior DEE (TRS-O) |) |
| | Mumbai Division Central Railway |) |
| | CST, Mumbai-400001. |)... Respondents |

Appearances

Mr. Rahul Walia a/w. Ms. Asmita Pendharkar, for Petitioner.

Mr. Suresh Kumar a/w. Ms. Smita Thakur a/w. Ms. Ananya Maitin, for Respondents.

**CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.**

DATE : 25th April 2023

PC

1. By this petition, petitioner challenges the judgment and order dated 5th July 2013 passed by Central Administrative Tribunal dismissing Original Application No.140 of 2009. In his Original Application, petitioner had challenged the order dated 31st October 2007 passed by the Disciplinary Authority imposing the penalty of removal from service. He has also challenged the order passed by the Appellate Authority on 29th February 2008 and Revising Authority dated 3rd April 2008.

2. In the disciplinary proceedings, petitioner faced charge of securing appointment on the basis of fake and bogus documents, which were never issued by any competent Railway authority. The charge is proved in the inquiry proceedings and petitioner has been removed from service.

3. We have heard Mr. Walia the learned counsel appearing for the petitioner and Mr. Suresh Kumar appearing for the respondent Railway Administration.

4. After having heard the learned counsels for the parties, it is seen that the document on the basis of which petitioner claimed appointment in the Central Railway is the order dated 12th October 1989. By that order petitioner is shown to have been appointed on the post of 'Khalasi'.

Petitioner is shown to be belonging to Scheduled Caste (SC) category in the appointment order. The appointment order bears two endorsements viz. (i) that petitioner was appointed on compassionate grounds, (ii) petitioner was been appointed against backlog meant for SC vacancies. Admittedly, no relative of petitioner worked in the Railway Administration, upon whose death, petitioner could be appointed on the compassionate grounds. This position is undisputed. Therefore, the endorsement in the appointment order to the effect that petitioner was appointed on compassionate grounds would clearly suggest falsity in the same. Petitioner does not belong to SC category. Therefore, his appointment could not have been made against backlog meant for SC posts. This is another ground to show that the appointment order of the petitioner is fake.

5. Petitioner's statement was recorded before initiation of disciplinary proceedings. In answer to question No.12, petitioner stated that he came to know on the date of recording of statement that his appointment was fake. In answer to question No.13, petitioner admits that though no money was advanced by him to Mr. Menan, he had offered fruits to Mr. Menan and his appointment was made in the Railway Administration. The petitioner's statement is recorded in Hindi, translation of which as given by petitioner reads thus;

"12. The letter dated 12.10.89 on which basis appointment is made it is found that the said letter was not issued by any of the Railway Offices to you.

Ans. Today I am knowing this fact that my appointment is made wrongly and

regarding the letter which was given to me I am not aware about the same till date.

13. Whether you want to say anything about that?

Ans. Sir, it is requested that I am continuously working since last 5 years and there is no quarrel with anybody else of whatsoever nature and my old mother and father are residing in my native place and I am having 4 children and today it is known to me that my appointment is made wrongly. I was sure that no money was accepted from me by Menan Saheb and by giving him fruits he took me into confidence and my appointment was made. It is my request to the Railway Administration kindly do the needful by taking into consideration my faith and loyalty and also after keeping mercies on my children."

6. Mr. Walia made strenuous efforts to contend that petitioner put in 14 years of service without any complaints with the Railway Administration. That no witness was examined in support of proof of charge except the Vigilance Inspector. That the author of the document (appointment order dated 12th October 1989) which is claimed to be fake, was not examined in the inquiry.

7. Mere long continuance in service based on fake document would not validate Petitioner's appointment which is *ab initio* void. Delay on the part of Railway administration in not detecting the fraud in timely manner enabled Petitioner to work and draw salary for 14 long years. However this factor, by itself, would not confer any right in favour of Petitioner.

8. The contention with regard to non-examination of witnesses to prove fake appointment or the author of fake appointment order is baseless. We fail to comprehend as to how Railway Administration was

supposed to prove the appointment order which is claimed to be fake by examining its author? Also on account of Petitioner's inability to prove that his relative was working in Railways upon whose death, he could be appointed on compassionate grounds, the falsity in the appointment order is writ large. Petitioner has also admitted in his pre-recorded statement that he had offered fruits to the concerned officer, who gave him appointment in the Railway Administration. Petitioner did not participate in any selection process for appointment. His appointment was shown to have been made on compassionate grounds against backlog quota for SC category. Since the petitioner's appointment could not have been made on compassionate ground nor against quota meant for SC category, the forgery in the letter of appointment is clearly borne out. The Tribunal has correctly appreciated the facts and no interference with its findings is warranted.

9. No case for interference by this court is made out. Writ Petition is devoid of merits. It is dismissed with no order as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ