



W.A. No. 2457 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 2457 of 2022

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C.M.P. No. 19113 of 2022

1. The General Manager,
Southern Railway HQ Office,
Park Town, Chennai – 600 003.
2. The Chief Passenger Transportation
Manager,
Southern Railway HQ Office,
Personnel Branch,
Park Town, Chennai – 600 003.
3. The Additional Divisional Railway
Manager,
DRM's Office, Chennai Division,
Southern Railway,
Chennai – 600 003.



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4. The Senior Divisional Operations
Manager,
DRM's Office, Chennai Division,
Southern Railway,
Chennai – 600 003.

..Appellants

Vs.

1. The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
Chennai.

2. D. Emarose

..Respondents

Prayer: Writ Appeal as against the order dated 30.09.2021 passed in
W.P. No. 16870 of 2016.

For Appellants :: Mr.V. Radhakrishnan
Senior Counsel for
Mr.M. Vijay Anand

For Respondents :: R1 Court
Mr.L. Chandrakumar for R2

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present writ appeal has been filed as against the order dated
30.09.2021 passed in W.P. No. 16870 of 2016 by the learned Single Judge



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whereby the award of the Labour Court was set aside directing the Railways to pay all the terminal benefits due to the 2nd respondent, who had attained the age of superannuation and that the amount should be settled within a period of three months from the date of receipt of a copy of this order.

2. The facts, in detail, that led to the filing of the writ appeal are as follows:

(a) The 2nd respondent, who joined the service of the appellant as a casual labourer with effect from 29.07.1978, was dismissed from service on the ground that he had secured employment by impersonation. The 2nd respondent was initially appointed as a casual labourer by the appellant Railways with effect from 29.07.1978. He was granted temporary status with effect from 29.11.1978 on completion of four months of continuous service. He was empanelled in the regular post as Porter on 16.03.1984 and further temporarily promoted to the scale of pay of Rs.775 – 1025 on 02.05.1992. On coming to know that the 2nd respondent had committed impersonation, a charge memo pertaining to major penalty was issued on 06.09.1996 and the charge reads as follows:



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"Shri G. Bhaskaran, S/o. Shri N.T. Ganesan, impersonated as Shri D. Emarose S/o. Shri A.S. Damodara Mudaliar (Retd Senior Parcel Clerk, Madras) and secured employment in Southern Railway and is now working as LRP / MAS. Thus, the person working in the name of Sri D.Emarose contravened Rule no. 3.1(i) & (iii) of Railway Service Conduct Rules, 1966. "

(b) After a detailed enquiry, the charges were held to be proved and the 2nd respondent was dismissed from service on 15.05.1997. The appeal and revision petition filed by him were also rejected. Aggrieved by the rejection, the 2nd respondent approached the Central Administrative Tribunal, Madras Bench by way of O.A. No. 429 of 2004 and the Tribunal, by order dated 10.01.2005, quashed the penalty and directed the appellant Railways to reinstate the 2nd respondent in service and conduct a fresh and full fledged enquiry and to pass a speaking order. Challenging the said order, the Railways preferred a writ petition in W.P. No. 22355 of 2005 before this Court and by order dated 09.04.2009, the Division Bench of this Court, while confirming the order of the Tribunal remanding the matter for enquiry, stayed the order of reinstatement. The relevant portions at paragraph Nos. 3 & 4 of the order dated 09.04.2009 passed in W.P. No. 22355 of 2005 are extracted hereunder:



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"3. The first respondent – Tribunal passed an order dated 10.01.2005 in O.A. No. 429 of 2004 setting aside the order of removal from service on the ground that the second respondent was set ex-parte while he reported sick and he was denied opportunity to defend in the enquiry and the enquiry was conducted in violation of principles of natural justice and remanded the matter for conducting full fledged enquiry.

4. The Tribunal, while setting aside the order of punishment, directed reinstatement. So far as the remanding the matter for further enquiry is concerned, we are confirming the said direction. However, we further direct such enquiry shall be completed within a period of two months from the date commencing from 15.04.2009. Since the matter is going for further enquiry, the direction relating to reinstatement which remained stayed during the pendency of the writ petition, shall also remain stayed. It would obviously depend upon the result of the enquiry. The respondent is directed to appear before the Senior Personnel Officer, Southern Railway – Mr. Moorthy – on 20.04.2009 at 11.00am at his office."

(c) On remand, even though a fresh enquiry was directed to be conducted, the first two witnesses, who were examined in the earlier enquiry were not at all examined and the Senior Personnel Officer, Southern Railway proceeded with the third witness and held that the charges were proved. The 2nd respondent himself admitted the charges as could be seen from his defence brief dated 18.05.2009 and the relevant portion runs thus:

"Sri A.S. Damodara Mudhaliar had acknowledged that I was his



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brother's son. Since he was upset that his son rejected his offer of appointment in Railways, he sentimentally wanted me to join Railways in the name of D.Emrose. Having been nurtured by him from my younger days, I had to accept his offer. He accompanied me to SS/O/MAS and introduced me as his son.

This is found reflected in the Enquiry Officer's Report in paragraph No.3.1 and the same reads thus:

“3.1 The CO in his written defence briefed stated that Shri A.S. Damodara Mudaliar had acknowledged that C.O was his brother's son. Since he was upset that his son rejected the offer of appointment in Railways, he sentimentally wanted the CO to join in Railways in the name of Emarose. Having been nurtured by him from his younger days, he had to accept his offer. The CO stated that Shri Damodara Mudaliar introduced him as his son to SS/O/MAS and processed the case for appointment as casual labour on daily wages basis. The CO argued that as he had the eligibility requirements to be absorbed as casual labour even without Damodara Mudaliar's help. Therefore, he had not acted as somebody else but only took up the assignment in the name of Emarose to satisfy Shri Damodara Mudaliar his foster father. He stated that the confronted enquiry report reveals the fact and also the details of the role played by Shri Damodara Mudaliar in helping him (CO) to get the appointment.



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3.2 *The CO argued that the word 'impersonation' means to act like somebody and trick someone. In this case, he had not acted as anyone else but himself he had declared as Damodara Mudaliar as his official father since he was his guardian. Further he did not take up someone else order of appointment and his appointment was process currently by Os, SS/O/MAS.”*

(d) The Enquiry Officer, after considering all the relevant aspects, had given a summation of what had been deduced in the enquiry at paragraph No. 6.14 and his findings find place at paragraph No.7.1 and they are extracted hereunder:

“6.14. The enquiry reveals the following:

- 1. Shri D. Emarose the original son of Shri Damodara Mudaliar was ex.employee of B&C Mill, during 1970-1994.*
- 2. Shri Emarose had produced enough documentary evidence to show that he is the original son of Shri Damodara Mudaliar.*
- 3. Shri Baskaran alias Emarose, LR porter/MAS is not the son of Shri Damodara Mudaliar.*
- 4. Shri Baskaran alias Emarose had admitted the fact during the confronted enquiry that Shri Damodara Mudaliar is not his father. Similarly Shri Damodara Mudaliar had identified Shri Emarose (employed in B&C Mills) as his original son.*



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5. *Shri Damodara Mudaliar identified Shri Bhaskaran alias Emarose as the son of one N.T. Ganesan.*

6. *Shri Bhaskaran alias Emarose admitted that Shri Damodara Mudaliar only helped him in securing employment in railways in the name of Emarose.*

7. *Securing appointment by concealing his real name and father's name is a clear misconduct and it amounts to impersonation.*

8. *The various defence put-forth by the CO have no legs to stand in view of the documentary evidence produced at the enquiry."*

....

*"7.1 Taking into account all oral and documentary evidences and the written Defence Brief of the Charged Official, I hold that the charge framed against Shri D. Emarose, Ex.LR Porter/MAS stands **PROVED** and he had contravened Rule 3.1 (i) and (iii) of the Railway Services (Conduct) Rules, 1966."*

(e) Accepting the findings of the Enquiry Officer, the 2nd respondent was dismissed from service which he had questioned by raising an industrial dispute under Section 2A of the Industrial Disputes Act, 1947 ("I.D.Act" in short). The Central Government referred the dispute for adjudication upon receipt of failure report from the Conciliation Officer.



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The Central Government Industrial Tribunal cum Labour Court had numbered the industrial dispute as I.D. No. 66/2013. The fairness of the domestic enquiry was questioned by the 2nd respondent and a preliminary order dated 22.05.2014 was passed by the Tribunal upholding the fairness of the domestic enquiry and the order of the Tribunal dated 22.05.2014 is extracted below:

“Since the first enquiry was conducted in the absence of the petitioner the Central Administrative Tribunal had directed further enquiry. This direction was confirmed by the High Court of Madras. The petitioner had fully participated in the further enquiry conducted. Out of the three witnesses examined earlier one was dead and one was not available. The available witness was cross-examined on behalf of the petitioner. Except for one document which was not available all other documents requested for by the petitioner was produced also. So the contention that enquiry was not conducted in a fair and proper manner has no basis.

I find that enquiry was conducted fairly and properly.”

(f) The Railways had taken a plea ever since the date of issuance of charge memo that the 2nd respondent had impersonated to get employment and that he was not at all eligible to be appointed and that the



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termination order was perfectly in order. No witnesses were examined on both sides, but documents were relied on by the parties. The Tribunal, after analysing the evidence on record, came to the conclusion that the charges are established, more so, in the light of the admission of the 2nd respondent and answered the reference against the 2nd respondent. The relevant paragraphs 12 to 17 of the award passed by the Tribunal are extracted below:

“12. By the time the new Enquiry Officer started enquiry, out of the witnesses examined in the earlier enquiry proceedings, the person by name Emarose, S/o. Damodaran Mudaliar who is said to have been impersonated by the petitioner was not available. Another witness examined earlier was also not available. Though the statement of Damodaran Mudaliar was recorded by the Investigating Officer he was not examined in the earlier enquiry proceedings. An attempt to examine him in the later enquiry proceedings proved futile as he was dead by that time. The only witness actually examined by the Enquiry Officer is one Rajamohan, Retired SPO. The Enquiry Officer seems to have relied upon the evidence of the earlier witnesses also to come to a conclusion regarding the issue involved. In fact this could not be relief upon as the earlier enquiry proceedings was already set aside.

13. SW3 Rajamohan examined before the Enquiry Officer is the one who had conducted investigation which is seen named as confronted enquiry in the enquiry proceedings. Ext.S7 is the findings of the enquiry



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in which it is found that Baskaran, S/o Ganesan got himself appointed in the Railways as Emarose, S/o, Damodaran.

14. The clinching evidence available against the petitioner in the enquiry proceedings is his own written defence brief. Though the defence brief is not produced by the petitioner probably because of the damaging consequence, the gist of the brief is available in the report of the Enquiry Officer. The Enquiry Officer has stated that the defence brief contained an admission on the part of the petitioner that he was son of the brother of Damodaran Mudaliar whose son is the real Emarose. As seen from the defence brief, Damodaran Mudaliar was upset that his son rejected the offer of appointment with the Railways and wanted the petitioner to join the Railways in the name of his son, Emarose. The defence brief proceeds to state that the petitioner had the eligibility requirements to be absorbed as Casual Labour in the Railways even without Damodaran Mudaliar's help and therefore he had not acted as somebody else but only took up the assignment in the name of Emarose to satisfy Damodaran Mudaliar. Thus the very defence brief submitted on behalf of the petitioner before the Enquiry Officer shows that he is actually not D. Emarose, the person he himself projected as one in the Respondent establishment, but someone else.

15. The counsel for the petitioner has submitted a written argument on behalf of the petitioner. The written argument evades the issue whether the petitioner is Emarose himself or is someone else who had pretended to be Emarose. The written argument does not refer to the defence brief submitted before the Enquiry Officer also. What is stated in the written argument is that the petitioner has applied with his own signature and did not forge signature in the name of Emarose and so



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there was no question of impersonation of anybody already working in the Railways. According to the counsel this would show that there was no impersonation on the part of the petitioner.

16. The only charge against the petitioner is that he projected himself as someone else for obtaining employment with the Respondent in contravention of Rule-3(iI) & (iii) of the Railways Service (Conduct) Rules, 1966. The very admission of the petitioner shows that he obtained job in the Railways in the name of another person. This is nothing but impersonation. For years and years he had been projecting himself as another person with the Respondent and had been drawing salary from the Respondent.

17. After the initial enquiry was set aside and a fresh enquiry was ordered, opportunity was available for the petitioner to prove that he is actually Emarose as projected by him. Not only that he did not put forth any evidence to this effect but admitted himself that he is someone else and not Emarose. The action of the petitioner in accepting job in the name of the someone else is a gross misconduct calling for severe penalty. It was only proper on the part of the Respondent to impose the penalty of termination from service. The petitioner is not entitled to any relief.”

(g) The Industrial Tribunal cum Labour Court came to the conclusion that the 2nd respondent's action in accepting the job in the name of someone else is a gross misconduct calling for severe penalty and the action of divesting the 2nd respondent of his duties is perfectly in order.



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Aggrieved by the said finding of the Industrial Tribunal cum Labour Court, the writ petition came to be filed.

(h) Learned Single Judge has proceeded to interfere with the order of the Industrial Tribunal on the ground that fresh enquiry would mean starting the process all over again, which shall commence from the beginning and hence, the findings thereof become *non est* in the eye of law. The learned Single Judge set aside the preliminary order as well as final award made in I.D. No. 66 of 2013 dated 22.05.2014 and 21.12.2015 respectively and held that the domestic enquiry was not fair and proper and also held that the charges have not been established in the enquiry. The learned Single Judge further held that the enquiry conducted was contrary to the directions of the Tribunal and well settled procedures and the entire enquiry stands vitiated for want of adherence to directions and has got to be termed as violation of principles of natural justice. The learned Single Judge was of the view that the Tribunal got carried away by the so-called admission recorded by the Enquiry Officer and the Disciplinary Authority and hence, the award passed was bereft of application of mind and that the finding was based on no evidence. Holding so, as the 2nd respondent had



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attained the age of superannuation during the pendency of the writ petition, the Railways was directed to settle all the terminal benefits due to the 2nd respondent. Questioning the same, the present intra-court appeal has been preferred.

3. According to the appellant, in the light of the clear and candid admission made by the 2nd respondent in his defence statement with regard to impersonation, which had been rightly considered by the Tribunal while dismissing the I.D. thereby confirming the penalty of dismissal, the learned Single Judge ought not to have interfered with the award passed by the Tribunal. Further, the 2nd respondent could have produced documents or any legally acceptable evidence to prove that he is the real Emarose, which has not been done. Instead, he himself has admitted the guilt of impersonation. That being so, the order of the learned Single Judge needs to be interfered with.

4. On the other hand, learned counsel for the 2nd respondent would submit that the order of the learned Single Judge does not suffer from any



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infirmity as the learned Single Judge was right in holding that the appellant Railways did not conduct a fresh and full-fledged enquiry in consonance with the directions given by the Tribunal and the second enquiry conducted was ridden with several irregularities thereby violating the principles of natural justice and the order of punishment imposed was without application of mind.

5. After hearing both sides, we are unable to accept the contention of the 2nd respondent that the domestic enquiry, which was directed to be redone, was not done properly. In the preliminary order dated 22.05.2014, it has been clearly stated that out of three witnesses examined earlier, one was dead and one was not available and that the available witness was cross-examined. A dead person cannot be summoned to let in evidence. The other person was not traceable and the only available witness was produced before the Enquiry Officer in the second enquiry conducted, pursuant to the orders of the Tribunal dated 10.01.2005 in O.A. No. 429 of 2004 as confirmed by the order of this Court dated 09.04.2009 in W.P. No.



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22355 of 2005. In fact, the 2nd respondent appeared for the enquiry and admitted the guilt before the Enquiry Officer as could be seen from his defence brief dated 18.05.2009, which has been extracted supra. Paragraph Nos. 3.1 and 3.2 of the Enquiry Report which reflects the defence statement of the charged official/2nd respondent wherein he had admitted impersonation have also been extracted in the earlier portion of this judgment.

6. It is not in dispute that Baskaran and Emarose are two different person and Bhaskaran had joined the service of the appellant Railways in the name of D. Emarose, which is nothing but impersonation. This is also evident from the tabular column at paragraph No.6.8 of the Enquiry Report available at Page No. 98 of the typed set of papers wherein the Enquiry Officer has categorically recorded the personal details/bio-data of Bhaskaran and D. Emarose based on documentary evidence produced and the same is extracted below:

<i>Name</i>	<i>D. Emarose</i>	<i>Bhaskaran</i>
<i>Father's name</i>	<i>A.S. Damodara Mudaliar</i>	<i>N.T. Ganesan</i>
<i>Mother's name</i>	<i>Deivanayaki</i>	<i>Akilandeswari as per Ext.2 Malligeswari as per Ext.S6</i>



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Brother's name	Meenatchi Sundaram	----
Wife's name	Vasanthi	Megala
Daughter/Son	Malathi(D) Sathishkumar (S)	Nithya (D) & Surya (S)
Date of birth	09.06.1949	11.02.1959
Edu. Qualification	PUC failed	VI Std.
School last studied	Thiruvotteswarar Free High School, Vepperi.	Cms Angala Amman, Hutting Ground, Tattankullam, Chennai -7.
Employment	B&C Mill from 1970 to 1994	As LR Porter, CYM/O/MAS (Southern Railway)
Address	No.181, Main Road, Kamaraj Nagar, Avadi, Chennai – 600 071.	No.15, 7th West Cross Street, Mahakavi Bharathiyar Nagar, Chennai – 39.

From the above, it is clear that Bhaskaran is not the son of A.S. Damodara Mudaliar. The Labour Court has categorically rendered a finding in paragraph Nos. 14 to 16 (extracted supra) that it was a clear case of impersonation.

7. Though it has been vehemently contended by Mr.L. Chandrakumar, learned counsel for the 2nd respondent that the witnesses, who were examined in the earlier enquiry were not examined in the second enquiry, we are of the view that in the light of the judgment of



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the Hon'ble Supreme Court in the judgment rendered in ***J.D. Jain V. The Management of State Bank of India and Another*** reported in ***1982 AIR 673*** has held that ***hearsay evidence is admissible in domestic enquiry and strict rules of evidence are not applicable in case of domestic enquiry*** and the relevant portion of the said judgment is extracted hereunder:

“9.....The learned Tribunal has committed another error in holding that the finding of the domestic enquiry was based on “hearsay” evidence. The law is well-settled that the strict rules of evidence are not applicable in a domestic enquiry. This Court in the case of State of Haryana & Another V. Rattan Singh held:

“It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility””.

In this case, out of three witnesses examined, one witness was no more and the other witness could not be traced and one Rajamohan, retired SPO had got into the box and tendered evidence in the domestic enquiry. That apart, in this case, on remand, there is a categorical admission by the 2nd respondent in his defence statement with regard to impersonation and the



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Enquiry Officer has also recorded the same in paragraph No.6.9 of the Enquiry Report and the Tribunal, by its preliminary order dated 22.05.2019 has held that the domestic enquiry conducted was fair and proper. The charged official himself has admitted in the confronted enquiry that Shri Damodara Mudaliar took him to one Shri Munusamy, Clerk, SS/O/MAS in connection with the appointment and introduced him as his son Sri Emarose. Before the Enquiry Officer and the Tribunal, documents were available indicating that Bhaskaran got appointment in the name of D. Emarose S/o. Damodara Mudaliar while in fact, he was not the original son and that the plea that he is the foster son of Damodara Mudaliar cannot be accepted. That apart, the Madras High Court, in the judgment rendered in ***S.K. Raman V. The Management of Kundah Rural Co-operative Agricultural Society*** reported in (1987) 1 LLJ 487 (Mad) held that in case, *an employee admits his guilt in the reply to the show cause notice, that itself would not be sufficient to hold him guilty. A full fledged enquiry needs to be held. But if the same is produced in the enquiry and the employee confirms it, it can be taken on record.* However, in ***Dharmaratmakara R.A. Ramaswamy Educational Institution V. The Educational Appellate Tribunal and***

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another reported in **(1999) 7 SCC 332** the Supreme Court has held that *there is no need for an enquiry if one admits guilt*. The Apex Court had gone to the extent of dispensing with the enquiry in case of admission and the decision in *S.K. Raman* mentioned supra is no longer a correct law. In the present case, the employee has admitted his guilt by way of his defence statement, which has been rightly taken note of by the Enquiry Officer in the second enquiry conducted. The reasoning given by the learned Single Judge for interfering with the award of the Labour Court and also reversing the preliminary order that there was no fresh and full fledged enquiry against the 2nd respondent in the eye of law is not correct, more so, in the light of the principle laid down by the Hon'ble Supreme Court in **(1999) 7 SCC 332**.

8. Impersonation cannot be taken lightly. It is a very serious misconduct and the learned Single Judge has lightly brushed aside the admission of the 2nd respondent that the “so-called” admission recorded by the Enquiry Officer cannot be relied upon. When the factum of admission of guilt has been proved, the observation of the learned Single Judge will pave way for others to impersonate and enter employment. Hence, the order of

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the learned Single Judge in granting relief to the 2nd respondent is set aside and the preliminary order of the Tribunal dated 22.05.2014 and the final award dated 21.12.2015 are restored. The 2nd respondent is not entitled to any relief.

9. The writ appeal stands allowed. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (R.K.M.J.)

nv

28.02.2023

To

1. The General Manager,
Southern Railway HQ Office,
Park Town, Chennai – 600 003.
2. The Chief Passenger Transportation
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