

(1990) 04 DEL CK 0036

In the Delhi High Court

Case No : Original Appeal No's. 2348, 2349, 2350 and 2383 of 1988 and 305, 374, 621 and 633 of 1989

Rati Ram and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 14, 16

Citation : (1991) 20 DRJ 137

Hon'ble Judges : P.K. Kartha, C.J.; D.K. Chakravorty, J

Bench : Division Bench

Advocate : B.S. Mainie, Shyam Moorjani, O.P. Kshtriya and O.N. Moolri, for the Appellant;

Judgement

P.K. Kartha, C.J.

(1) In this batch of applications, the facts are more or less similar and the question of law involved is identical. It is, Therefore, proposed to deal with them in a common judgment.

(2) At the outset, it may be stated that the services of large number of employees who have worked in the Railways for different periods, have been terminated on the ground that they had produced bogus Casual Labour Cards at the time of their entry into service. Their initial engagement was subject to verification of their antecedents, etc. Later on, the Vigilance Branch of the Railways, after holding their investigations, arrived at the conclusion that some of them had produced fake or fictitious Casual Labour Cards containing bogus entries of work on the Railways prior to their endangerment. Based on such reports of Investigation by the Vigilance Branch, the Railways have terminated the services of the persons concerned. In some cases, they have served show cause notices to the employees concerned, obtained their replies thereto and thereafter, decided to terminate their services. In some other cases, the Railways

have conducted regular departmental inquiry against the employees concerned under the Railway Servants (Discipline and Appeal) Rules, 1968 and removed them from service. In yet other cases, no show-cause notice or departmental inquiry was conducted before terminating the services.

(3) In the present batch of applications, the employees had been given show cause notices and they had been given an opportunity to show cause why their services should not be terminated. No departmental inquiry was conducted against them. All of them have worked for about 8 years in the Railways.

(4) We have carefully gone through the records of these cases and have heard the learned counsel for both the parties. The legal issue arising for consideration is whether in cases of this kind, the Railways are bound to hold a departmental regular inquiry against them in accordance with the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968, or "whether the service of a show-cause notice would be sufficient so as to sustain the impugned order of termination, or whether the services could be terminated even without giving such a show-cause notice

(5) Two opposing points of view have been placed before us by the learned counsel for both the parties. According to the Counsel for the respondents, these are the cases in which the contract of service has been vitiated ab initio by fraud and misrepresentation. The offer of service was made to the employees on the assumption of certain facts which were not true and hence, there was no valid offer of appointment. There can also be no valid acceptance of such an offer when the person concerned accepts it knowing that the material statements in the offer were not true. In other words, there was no valid contract of service. Such an engagement does not give rise to a status which the Tribunal is obliged to protect. According to them, no one can be allowed to enjoy the fruits of his own fraud, in this view of the matter, there is no need to give any opportunity to the employee concerned to show cause and the engagement could be terminated on the ground that the conditions stipulated in the offer have not been fulfilled .

(6) As against the above, the learned counsel for the applicants submitted that principles of natural justice come into play in cases where termination of services has been effected on the suspicion of fraud or misrepresentation. The respondents have not produced any evidence in support of their plea that the applicants produced bogus cards at the time of their initial appointment. According to the counsel for the applicants, there is no bar to appointment even without producing Casual Labour Card indicating previous service with the Railways prior to 1978, such as appointment of sons of loyal workers and sports quota. These are not cases where the applicants are seeking to enjoy the fruits of their fraud or fraud practiced by some others. The applicants were not associated with the Vigilance inquiry. They had no access to the documents relied upon by the Vigilance investigation to ascertain what they had produced bogus Casual Labour Cards or not. According to them, to stand the test of validity, an order of termination cannot be passed without observing the

principles of natural justice. The two principles of natural justice relied upon by them are that no one can be the judge in his own cause and that no one should be condemned unheard. According to them, nothing short of a regular departmental inquiry under the relevant rules would meet the requirements of the principles of natural justice. This, of course, applies only to those Railway employees who have put in 120 days of continuous service and have acquired temporary status in accordance with the provisions of the Indian Railway Establishment Manual

(7) According to Rule 2511 of the Indian Railway Establishment Manual, casual labourers who have acquired temporary status, are entitled to the rights and privileges of Railway servants in temporary service set out in Chapter xxiii of the Manual. These include the benefits of the Discipline and Appeal Rules

(8) The two rules of natural justice relied upon by the applicants are not statutory rules. They are flexible and not rigid. They can be adapted and modified by statutes and statutory rules. In the instant cases, at least insofar as Railway employees who have acquired temporary status are concerned. Rule 2511 which embodies the above two principles in the statutory rules would apply. The termination of services without compliance with the provisions of Discipline and Appeal Rules, would not be legally sustainable. Termination of services on the alleged ground of fraud or misrepresentation will not fall in a separate category.

(9) The question arises whether termination of the services of Railway employees who have not acquired temporary status, merely on the suspicion or allegation that they were guilty of fraud or misrepresentation, will be legally tenable. Even here. we are of the opinion that they are entitled to be given a show-cause notice before termination of their services. In this context, reference may be made to the following observation of the Supreme Court in *National Textile Workers Union v. P.R.Ramakrishnan* 1983 Scc 72:

"Now it is in elementary principle of law, well-settled as a result of several decisions of this Court and particularly the decisions in *State of Orissa v. Dr. (Miss) Binapani Dei*, *A.K. Kraipak v. Union of India* and *Maneka Gandhi v. Union of India* that no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order and this rule applied in respective whether the proceeding in which it is passed is a quasi-judicial or an administrative proceeding."

(10) In *Union of India v. Tusi Ram Patel* 1985 Scc 672, the Supreme Court has observed as follows :-

"The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his Explanation thereto, have the right to know the

evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the , which are relied upon for the purpose of being used against him and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defense. The process of a fair bearing need not, however, conform to the judicial process in a court of law. because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair bearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry."

(11) The learned counsel for the applicants have heavily relied upon the decision of this Tribunal in *Sanjiv Kumar Aggarwal v. Union of India and others*, Atr 1987(2) Cat 566. In that case, the services of the applicants had been terminated in exercise of the powers conferred by Rule 5 (1) of the Central Civil Service (Temporary Service) Rules, 1965 without giving them any show-cause notice. The Tribunal upheld the validity of the impugned orders. The Tribunal observed that the material facts which formed the basis of their appointment (namely, their appearance and qualifying at the examination held by the Staff Selection Commission) are found to be false or if they had suppressed any material information, or the appointment was fraudulently obtained, it was liable to be terminated. The Tribunal had before it the relevant records to establish that the applicants therein had not qualified for appointment and were offered appointment either as a result of mistake or fraud. The Tribunal observed that the termination orders under challenge were wholly innocuous and did not attach any stigma what so ever. These orders did not state that their services were terminated because they had secured their appointment by practicing fraud. However, it was observed that there may be cases where the termination order on the facts of it is innocuous and may be termed as termination simpliciter, yet in reality, it may be by way of punishment. Where such an allegation is made the Court can certainly tear the veil and find out the true foundation of the order. If it finds from the record that the termination is really based on misconduct or if, in fact, by way of punishment, it can strike down the same.

(12) *Sanjiv Kumar Aggarwal's* case was followed by this Tribunal in *Sat Bir Singh v. Union of India and others*, Atr 1988(1) Cat 464. That case related to the termination of services of a Mazdoor in Army Base Workshop (E.M.E., Delhi Cantt.) in exercise of the powers conferred by Rule 5(1) of the Ccs (Temporary Service) policy 1965. On appointment the Attestation Form of the applicant was sent to the authorities concerned for verification of character and antecedents*, who in turn, informed that he had concealed the fact regarding his arrest by the Police in a criminal case, in the Attestation Form submitted by him at the time of his appointment. They had also produced the Attestation Form for the perusal of the Tribunal. The Tribunal observed that the misconduct was not committed by the applicant during the course of his service as a Government servant as such.

In this context, reference may be made to the decision in Sanjiv Kumar Aggarwal's case. Nevertheless, the Tribunal observed that the respondents did not afford the applicant an opportunity to explain his conduct in the light of the report received by them from the authorities concerned which only constituted prima-facie evidence of the involvement and the arrest of the applicant in a criminal case. It could not be said to be conclusive in the matter and it was open to him to rebut the same or give any coping or valid reasons for furnishing the information in the Attestation Form. In this connection, reference was made to the principle of fair play and reasonableness action envisaged by Articles 14 and 16 of the Constitution. The application was, Therefore, allowed and the impugned order set aside, directing the respondents to pass a fresh order after affording the applicant an opportunity to submit his application with regard to his alleged misconduct and bearing him, if he so desired.

(13) The decision in Sanjiv Kumar Aggarwal's case will be of no assistance to the applicants before us. The impugned, orders were passed by the respondents in these cases in view of the alleged misconduct committed by the applicants in securing the appointment by producing bogus Casual Labour Cards. The termination was not termination simpliciter, unlike in Sanjiv Kumar Aggarwal's case. The allegations contained in the notices issued to the applicants disclose a charge of misconduct and the termination of their services which was sought to be ordered on that ground, amounted to imposing a penalty by way of disciplinary action. In *Bhola Ram v. Union of India* through the General Manager, Northern Railway, 1988(8) Act 918. this Tribunal held that in such a case, termination cannot be effected in the case of a regular employee of the Railways without following the procedure prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968 (see also *Bhagwan Dass v. Union of India* and others. 1988 (1) Atlt (CAT) 427.

(14) The upshot of the foregoing discussion is that in the cases where the respondents allege a charge of misconduct against a Railway employee and terminate his services on that ground, it amounts to the imposition of penalty by way of disciplinary action. In case, he has acquired temporary status, even though the respondents allege that his initial engagement was by fraud or misrepresentation, his services cannot be terminated without following the procedure prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968. In case, he has not acquired temporary status, we are of the opinion that termination of the services could be effected by affording him an opportunity to explain his conduct and to hear him on the point. If the respondents have formed an opinion on the basis of some documents, the employee should also be afforded an opportunity to submit his Explanation. He would also be entitled to know the evidence by which it is proposed to prove the allegation of misconduct against him, to inspect the documents sought to be relied upon for the purpose of being used against him and to produce his own evidence in his defense. In case, he asks for a personal hearing, that also should be afforded to him.

(15) We may consider the facts of the applications before us in the light of the legal position explained above.

(16) In all these cases, the applicants have worked for more than eight years in the Railways. They had acquired temporary status. In July, 1986, a vigilance inquiry was held in regard to their appointment. The Vigilance Inspector had recorded their statement during the investigations. The respondents have stated that in the statements tendered by the applicants, they had admitted their guilt, whereas the applicants have contended that these statements were recorded not voluntarily but under duress. No inquiry was conducted against them in accordance with the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968. Instead, they were given show-cause notices alleging that they had secured appointment on the basis of fictitious Casual Labour Cards containing bogus entries of their working on the Railways prior to their appointment, that the investigation had revealed that they had never worked on the Railways prior to their engagement and their previous casual labour service had been found false and bogus, and that the authorities concerned had come to the conclusion that they were not fit persons to be retained in service as they had obtained the service by fraudulent means and misrepresentation. By the show cause notice, they were given opportunity to make representations within 15 days. It was added that if they failed to submit the representation within the stipulated period, it would be presumed that they had no representation to make and orders would be passed against them ex parte for removal of their services.

(17) All the applicants have denied the allegations made against them in the show-cause notice. Thereafter, the impugned orders of removal from services were passed against them. The appeals preferred by the applicants in OA-304/89, OA-374/89 and OA-633/89 were rejected. In other cases, there is nothing on record to indicate that the applicants preferred appeals to the authorities concerned.

(18) Copies of the show cause notices served on the applicants are in standard, cyclostyled forms wherein the names and dates of the applicants have been written in ink. This indicates non-application of mind on the part of the authorities concerned. We are also not impressed by the plea raised by the respondents that the applicants have admitted their guilt. If that were the position, it is difficult to understand why the show-cause notices did not mention that during the vigilance investigation, they had admitted their guilt in their statements recorded by the Vigilance Inspector. This has not been done.

(19) In the conspectus of the facts and circumstances of these cases, we allow these applications and order and direct as follows :-

(I) OA-305189 The impugned show-cause notice dated 17-8-1988, the impugned order of removal from service dated 13-12-1988 and the appellate order dated 16-1-1989 are set aside and quashed. OA-374189 The impugned show-cause notice dated 17-8-1988, the impugned order of removal from service dated

13-12-1988, and the impugned appellate order dated 11-1-1989 are set aside and quashed. OA-633189 The impugned show-cause notice dated 17-8-1988, and the impugned order of removal from service dated 6-12-1988, are set aside and quashed. OA-621189 The impugned show-cause notice dated 17-8-1988 and the impugned order of removal from service dated 6-12-1988 are set aside and quashed. OA-2348188,OA-2349188,OA-1350188andOA-2383189 The impugned show-cause notice dated 17-8-1988 is set aside and quashed. (ii) We hold that the so-called statements recorded during the vigilance investigation, cannot be relied upon as admission by the applicants of the allegations brought against them. (iii) The respondents are directed to reinstate the applicants in service. In the facts and circumstances of the case, we do not, however, direct payment of back wages to them. (iv) after reinstating them, the respondents will be at liberty to take appropriate action against them under the Railway Servants (Discipline and Appeal) Rules, 1968, for any alleged misconduct, if so advised. (v) The Respondents shall comply with the above directions within a period of 3 months from the date of communication of this Order. (vi) The parties will bear their own cost. Let a copy be placed in all the eight case files.