
(2004) 08 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 7334 of 2001

The Integral Coach Factory

APPELLANT

Vs

V. Prabhakaran and The Central Administrative Tribunal

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Constitution of India, 1950 — Article 311

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 10, 9

Citation : (2005) 104 FLR 12 : (2005) 1 LLJ 422 : (2004) 4 MLJ 161

Hon'ble Judges : R. Banumathi, J;P.K. Misra, J

Bench : Division Bench

Advocate : K. Venkateswara Rao, for the Appellant; K.V. Subramanian, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—The Petitioners/Integral Coach Factory have filed this Writ Petition for issuance of Writ of Certiorari to call for the

records relating to O.A. No. 596 of 1999 on the file of the Central Administrative Tribunal, Chennai Bench and the Order dated 30.11.2000 and

to quash the same. By the Impugned Order, the Central Administrative Tribunal set aside the Order of termination of service of the First

Respondent finding that proper procedure were not followed and further finding that the Charge Memo issued to the First Respondent was based

on ""no evidence"".

2. This Writ Petition arises on the following facts:-

The First Respondent was appointed as Skilled Artisan Grade III in Grade ""C"" Service against Sports Quota for the year 1989. At the time of his

appointment, the First Respondent has produced :-

(i) S.S.L.C Mark Sheet - Marks as 281 out of 500.

(ii) Transfer Certificate bearing No. 1301 and admission No. 1420.

(iii) Additional qualification in the prescribed course in the Industrial Training Institute issued by Ambattur, I.T.I.

(iv) Provisional Trade Certificate bearing No. 543 purported to have been issued by the Government Industrial Training Institute, Ambattur, Chennai.

(v) National Trade Certificate with Serial No. 4250.

3. During 1997, based on source information, the Vigilance Branch of Integral Coach Factory investigated into the bonafides of the credentials by

verification with the concerned Educational / Technical Institutions. On a reference to the Headmistress, Corporation High School, Strahans Road,

Chennai, she has replied that the Admission No. 1420 shown in the copy of the Transfer Certificate belonged to some other student viz., one

Moorthy, Son of Gopal, who had joined the school in 1967-68. She has also informed that no person by name V. Prabhakaran, Son of P. Vadivel

(First Respondent herein) had studied in their school according to the records. Similarly, on reference to the Deputy Director / Principal,

Government I.T.I, Ambattur, he replied that the Certificate relating to I.T.I qualification produced by the First Respondent did not relate to the

First Respondent and that he had not undergone the Training in the Institution and that the Certificate in question was not issued by the Institution.

4. On the basis of Vigilance Report, the First Respondent was issued a Memorandum of Charges dated 16.10.1997 containing the following

Charges:-

Shri. V. Prabhakaran at the time of his appointment was Skilled Artizan Gr. III/ SGL (Trainee) on Sports Quota (Kabaddi) on 14.12.1989 in

ICF, has produced a bogus Transfer Certificate and bogus SSLC Mark Sheet.

Shri. V. Prabhakaran at the time of his appointment was Skilled Artizan Gr. III/ SGL (Trainee) on Sports Quota (Kabaddi) on 14.12.1989 in ICF,

has submitted a bogus Provisional Trade Certificate and also bogus National Trade Certificate in the trade of Fitter".

For those Charges, the First Respondent neither filed Written Statement of defence nor availed himself the help of a defence helper. One K.

Suresh, Senior Section Engineer was the Enquiry Officer. After conducting the enquiry, the Enquiry Officer has submitted his Report with the

findings that the Charges against the First Respondent were proved. Copy of the Enquiry Report was furnished to the First Respondent on

21.01.1998 under Acknowledgement directing him to make his representation, if any. The First Respondent did not submit any representation.

Thereupon, the Disciplinary Authority, after considering the evidence on record and the Inquiry proceedings and the Report, agreed with the

findings of the Enquiry Officer holding that the Charges against the First Respondent were proved by the order dated 30.03.1998. The First

Respondent was ordered to be removed from service. Against that order, the First Respondent filed an Appeal before the Deputy Chief

Mechanical Engineer/Appellate Authority. By the order dated 28.07.1998, the Appellate Authority dismissed the Appeal. Revision Petition filed

by the First Respondent was also rejected.

5. The First Respondent filed an Application in O.A. No. 596 of 1999 before the Central Administrative Tribunal, Chennai for setting aside the

order of removal from service and for reinstating him into service. The Central Administrative Tribunal set aside the Order of termination inter alia

on the following findings:

(i) that there was no Presenting Officer for the Department and that Enquiry Officer himself cannot be the Prosecutor;

(ii) No documents were marked nor Original Certificates from the Corporation High School, Strahans Road, Chennai and Government Industrial

Training Institute, Ambattur, Chennai were called for comparison. Only Xerox copies were produced and shown to the First Respondent;

(iii) Non-examination of Mani Ramakrishnan - Coach in the Integral Coach Factory, who was responsible for the appointment of the First

Respondent;

(iv) that there is violation of Rules 9 and 10 of Railway Servants (Discipline and Appeal) Rules, 1968 and that finding arrived on the basis of the

answers given before the Enquiry Officer is a finding ""based on no evidence"".

6. The contention of the First Respondent raised before the Tribunal that the candidates who were similarly placed were given only a minor

punishment inspite of the fact that they have produced bogus certificates was not accepted. The Tribunal was of the view that it cannot be a

precedent to uphold the claim of the First Respondent and the Tribunal rejected the contention finding that a bad precedent should not make a

good law.

7. Aggrieved over the Order of the Tribunal in setting aside the Order of termination, the Department has preferred this Writ Petition.

8. Learned counsel appearing for the Petitioners /Integral Coach Factory Mr. K. Venkateswara Rao assailed the findings of the Tribunal

contending that the First Respondent himself did not avail the opportunity to defend himself in the conduct of the Departmental Proceedings either

by filing Reply Statement or filing the Explanation before the Disciplinary Authority. It is further submitted that the definite answers to the questions

put by the Enquiry Officer that he had not studied in the Corporation High School, Strahans Road, Chennai and that he had studied only in

Government High School, Orathanadu, Thanjavur District was not properly taken note of by the Tribunal. Placing reliance upon the decision of the

Supreme Court reported in Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, learned counsel for the petitioners

contended that in cases of this nature, there cannot be equity. Referring to the decision reported in R. Vishwanatha Pillai Vs. State of Kerala and

Others, , learned counsel urged that Article 311 of the Constitution of India is not applicable where the Government Servant has secured

employment on the basis of bogus certificate.

9. Countering the arguments, learned counsel for the First Respondent Mr. K.V. Subramanian assailed the Departmental Proceedings contending

that the Enquiry Officer was appointed and that there was no Presenting Officer and the answers elicited from the First Respondent by the Enquiry

Officer himself cannot form the basis for arriving at the conclusion. Further submitting that the Management has not produced the Originals of the

relevant documents and that when the alleged misconduct is not proved, the Tribunal has rightly quashed the order of termination from service. The

main contention urged is that there is violation of the procedure for imposing major Punishment - Rules 9 and 10 of the Railway Servants

(Discipline and Appeal) Rules, 1968 (hereinafter referred to as ""the Rules"").

Learned counsel for the First Respondent prays to sustain the order of the Tribunal. Drawing our attention to the decision reported in Sher Bahadur Vs. Union of India (UOI) and Others, , learned counsel contended that there was ""no sufficiency of evidence"" and no connecting evidence adduced against the First Respondent. It is the further contention that non-offering of explanation by the First Respondent in the Departmental proceeding may be an act of imprudence, which cannot be construed adverse against the First Respondent.

10. We have carefully considered the submissions of both sides and gone through the records.

11. Issuance of Writ of Certiorari - legally a matter of sound discretion. Certiorari would be issued only where the finding of the Tribunal suffers

from the error of law or apparent on the face of the record. Whether the Order of the Tribunal in setting aside the Impugned Order of termination

of the First Respondent suffers from jurisdictional error is the point falling for our consideration in this Writ Petition.

12. It is well settled position that the Administrative Tribunal has no jurisdiction to go into the question of correctness of the truth of the charges and

the Tribunal cannot take over the function of the Disciplinary Authority in analysing the materials and evaluating the same. In this case, the Tribunal

though prima facie had not analysed the evidence, interfered with the order of ""removal from service"" by analysing the materials by saying ""that it is

a case of no evidence"". In its view, the Tribunal found that no evidence was produced against the First Respondent to sustain the order. However,

the Tribunal indicated that it is conscious of the fact that it is not re-appreciating the evidence, but only considering that it is a question of ""no

evidence"". So saying, the Tribunal has gone into the details of the Charges.

13. It is not the function of the High Court to see whether there is some evidence and whether such evidence would reasonably support the

conclusion. However, since the Tribunal has interfered with the order or removal from service by setting aside the Charge memo and the

punishment, we find it appropriate to go through the records in appreciating the contentious points urged before us.

14. The First Respondent entered the service of Integral Coach Factory as SK.Gr.III/FGL (Trainee) on Sports Quota (Kabbadi) on 14.12.1989.

The misconduct alleged against the First Respondent is that he secured the appointment on production of the following bogus Certificates:-

(i) Transfer Certificate } Purported to have been

Serial No. 1420 } issued by Corporation

High School, Strahans

Road, Chennai - 12.

(ii) S.S.L.C. Mark Sheet Purported to have been

issued by Corporation

High School, Strahans

Road, Chennai - 12

(Issued by Board of

Secondary Education,

Tamil Nadu)

(iii) I.T.I Certificate } Purported to have been

in the Trade of } issued by Government

FITTER } Industrial Training Institute

Ambattur, Chennai - 98.

(iv) National Trade } Government Industrial

Certificate - for } Training Institute, Ambattur,

Training in } Chennai - 98.

Vocational Trades }

Along with the above Certificates, the First Respondent applied to the Integral Coach Factory in the Sports Quota for recruitment to Class III / IV

Posts. While submitting the Certificates, the First Respondent stated that he has excelled in Kabbadi and set out the list of Championship and the

Tournaments attended by him. While submitting his application, the First Respondent had given a declaration verifying the correctness and

truthfulness of the information furnished thereon as could be seen from the following in the Application:

...I do hereby declare that the particulars furnished above are true to the best of my knowledge and belief and I am prepared to produce the

original certificates as and when called for....

15. His declaration that the particulars furnished by him are true to the best of his knowledge were proved to be false. Vigilance Inquiry was taken

to investigate into the bonafides of the credentials by verification with the concerned Educational / Technical Institutions. The Headmistress of the

Corporation High School, Strahans Road, Chennai has issued a Certificate to the effect:-

.....Admission No.1420 belongs to some other person by name Thiru. Murthy, Son of Thiru. Gopal who had joined in 1967-68 in VI Std,

whereas no particulars regarding V. Prabakaran found in our Office records....".

Likewise, Deputy Director / Principal, Government Industrial Training Institute, Ambattur, Chennai in his Letter has stated that

.....Shri. V. Prabakaran, S/o. Shri. P. Vadivel has not undergone training in this institution in FITTER TRADE. This provisional and original

certificates in question have not undergone the training and the certificate was not given in this Institute....."(Sic)

16. Thus, the S.S.L.C. Mark Sheet, Transfer Certificate and the Technical Training Certificate produced by the First Respondent were proved to

be bogus. In that circumstance, further production of the Originals or examination of Headmistress of Corporation High School, Strahans Road,

Chennai or the Principal of Government Industrial Training Institute, Ambattur, Chennai had not arisen at all. In our considered view, the Tribunal

erred in finding that the originals ought to have been marked for comparison. We have carefully perused the materials and the originals. From the

Charge Memo served upon the First Respondent, we find that the alleged bogus documents are listed and shown as Annexure-III. In our view, the

First Respondent was put on sufficient notice of the documents relied upon by the Department.

17. In the Departmental Enquiry, due opportunity was given to the First Respondent. The First Respondent has not filed any Reply Statement to

the Charge Memo. In the proceedings before the Enquiry Officer, the First Respondent has categorically admitted that he has studied in

Government High School, Orathanadu, Thanjavur District". He has further admitted that he "discontinued I.T.I from Shanmuga I.T.I, Thanjavur".

To the questions put by the Enquiry Officer, the First Respondent has admitted that he is aware that bogus certificates are not to be submitted at

the time of appointment to the Government Services. On such materials and answers of the First Respondent, the Enquiry Officer found that the

Charges levelled against the First Respondent were proved and found him guilty. Thereafter, the Disciplinary Authority issued the notice to the First

Respondent. The First Respondent has not filed any Statement before the Disciplinary Authority also and remained silent.

18. During the Enquiry proceedings, while orally answering to the charges levelled against him, we find that the First Respondent had stated,

.....I was working in Pandian Roadways Corporation. I was representing Pandian Roadways Corporation in various tournaments for Three years

from 1986 to 1989. I had submitted my original Certificates of my Educational Qualifications viz., S.S.L.C. Mark Sheet, Transfer Certificate, I.T.I

discontinued Certificate to the then Coach of Pandian Roadways Corporation Shri. Mani Ramakrishnan.....".

19. If the First Respondent was in possession of the originals or produced before the Pandian Roadways Corporation, nothing prevented him from

producing the originals during the Enquiry proceedings or examining the said Mani Ramakrishnan. In our view, the Tribunal proceeded on the

wrong footing that the Department ought to have produced the Original Certificates and examined Mani Ramakrishnan. When the Certificates

produced by the First Respondent along with his Application are proved to be bogus and admittedly, when he studied in the Government High

School, Orathanadu and not in Madras, we are of the view that the Tribunal was not right in finding that it is a case of ""no evidence"".

20. After the Major punishment - removal from service was passed, the First Respondent has preferred an Appeal before the Chief Mechanical

Engineer, Integral Coach Factory. In his Appeal against penalty Advice, the First Respondent has stated that he was not aware as to how the

mistake had happened or who has committed the mistake and it may have happened beyond his control and without his knowledge. We may usefully

refer to his representation, which reads as follows:-

.....I wish to state that the answer to question No. 15 of the Enquiry Proceedings are true and I could not say with precision how this mistake as

alleged has happened or who has committed this mistake, since this might have happened beyond my control and without my knowledge. I beg to

submit that I have not committed any mistake deliberately or with the intention of duping the administration and I am innocent.....

One is to be too naive to accept the contention of the First Respondent that the production of bogus certificates was without his knowledge and

the mistake crept in beyond his control. We are of the view that this contention of the First Respondent has no substance. The learned counsel for

the First Respondent has submitted that the mistake has crept in beyond the control of the First Respondent. This submission does not merit

acceptance.

21. In his representation, the First Respondent has further stated "".....that he hails from a very poor economically backward family and had the

opportunity of compulsion of supporting his aged parents and two unmarried Sisters.....and that Mani Ramakrishnan helped him in securing the

job..."" The statement of the First Respondent that he hails from a poor economically backward family is not a correct statement. From his

application, we find that the Father of the First Respondent viz., Vadivel is a Police Constable at Orathanadu. We are of the view that when grave

mis-conduct of production of bogus certificate is alleged and proved, there cannot be any room for compassion and humanitarian grounds.

22. The main contention urged by the learned counsel for the First Respondent is that there is non-compliance of the procedure contemplated and

the Presenting Officer was not appointed for the Enquiry Proceedings. This contention cannot be countenanced. The Disciplinary Authority may,

by an order in writing on Standard Form No. 8 nominate a Railway Servant or any other Government Servant to be known as ""Presenting Officer

to present the case in support of the charges, before the inquiring authority. The nomination of a Presenting Officer in Disciplinary Inquiry is not

obligatory but only discretionary with the Disciplinary Authority. In case, where no Presenting Officer is appointed the Inquiring Authority may itself

examine and cross-examine the witnesses to find out the truth in the charges. Appointment of the Presenting Officer is only discretionary. Non

appointment of the Presenting Officer would not in any way vitiate the Enquiry proceedings. Further, this point was not raised before the

Departmental Enquiry. It is also not shown how the absence of nomination of the Presenting Officer has caused prejudice to the First Respondent.

23. Yet another ground urged by the First Respondent is the violation of non-compliance of Rules 9 and 10 of the Rules. Rule 9 deals with the

Procedure for imposing major punishment"". Rule 10 deals with ""Action on the Inquiry Report"". We have carefully gone through Rules 9 and 10 of

the Rules. In our view, the procedure laid down in the above said Rules are substantially complied with by the Department. The fact that the

Enquiry Officer himself had put the questions to the First Respondent/Delinquent would not amount to violation of Rules 9 and 10 of the Rules.

24. Submitting that the Department has not produced the Original Certificates and has not applied the principles of Natural Justice, learned counsel

for the First Respondent has relied upon Associated Cement Co. Ltd. Vs. The Workmen and Another, and Meenglas Tea Estate Vs. Its

Workmen, . In the first decision, the Department sought to rely upon the evidence given in an Enquiry against one workmen against the another. In

that view of the matter, the Supreme Court observed that the evidence given in an Enquiry against one workmen cannot be accepted as evidence

in an Enquiry against another and further observed that employer should lead evidence against the Workman charged. That decision has no bearing

to the case in hand. Violation of principles of Natural justice could be the ground for setting aside the order only when prejudice is caused to the

person concerned. Mere complaint of violation of principles of Natural Justice itself is no ground to interfere. In our view, upon the admitted facts

and the available materials leading to no other conclusion excepting the one that the First Respondent has produced the Bogus Certificates. Hence,

the First Respondent cannot successfully urge upon the violation of principles of Natural justice. This is all the more so, when the First Respondent

remained silent during the Departmental Proceedings.

25. Learned counsel for the Department has submitted that when the appointment is secured by Fraud, Article 311 of the Constitution of India is

not at all attracted and in support of his contention, he has relied upon the decision reported in R. Vishwanatha Pillai Vs. State of Kerala and

Others, . In the said case before the Supreme Court, the Delinquent Officer secured the employment by production of Bogus Caste Certificate.

The Supreme Court observed that when the appointment is secured by practising fraud, Article 311 of the Constitution of India is not attracted.

We may usefully refer to the observations of the Supreme Court, which are as follows:

.....Where the Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud, his appointment to the post was void and non est in the eyes of law and therefore, the order of dismissal of appellant cannot be substituted by an order of compulsory retirement. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of Supreme Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy consideration can come to his rescue....

We are of the view that the First Respondent has secured the appointment by production of Bogus Certificates. It would necessarily follow that the First Respondent has played the fraud upon the Department. We are unable to sustain the Order of the Tribunal quashing the order of termination and going to the details of fraud played upon the Department, which is evident on the face of the records.

26. We may also usefully refer to the decision reported in Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, where the Supreme Court has recalled the order of Appointment secured by the workman on the basis of Bogus and forged casual labourer Cards. The said case also arose out of Railways Services (Conduct) Rules 1966 where the Respondent/Workman obtained employment in Railway services on the basis of bogus and forged casual labourer service cards. That fraud was detected by the Railway authorities. The Central Administrative Tribunal, Ernakulam Bench has taken the view that the aforesaid misconduct would not fall within the four corners of Rule 3(1)(i) and (iii) of Railway Services (Conduct) Rules 1966 and the Administrative Tribunal set aside the order of removal from service and directed that the

workmen are entitled to be reinstated in Railway Services and consequential benefits. Setting aside that Order, the Supreme Court has observed,

.....Fact that employee continued in service for number of years on basis of such appointment - cannot create equity in their favour nor estoppel

against employer....

The Supreme Court further observed that it amounts to a fraud on public and that no court should be a party to the perpetuation of the fraudulent

practice. Applying the same, we are of the firm view that this Court cannot be a party to the perpetuation to the fraudulent practice adopted by the

First Respondent.

27. Learned counsel for the First Respondent has relied upon the decision reported in Sher Bahadur Vs. Union of India (UOI) and Others, and

submitted that there is no sufficiency of evidence connecting the First Respondent with the alleged misconduct. In the said case before the Supreme

Court, there was ""no sufficiency of evidence"" and in that view of the matter, the Supreme Court has observed that mere finding ""....""in view of oral,

documentary and circumstantial evidence as adduced in the Enquiry"" as erroneous. The case in hand is not the one where there is ""no sufficiency of

evidence"". As we have elaborated earlier the fraud played upon the Department - production of the bogus certificate by the First Respondent is

well proved and substantiated by the documents.

28. We find that the decision of the Central Administrative Tribunal in setting aside the order of termination is not well founded and suffers from

error apparent on the face of record. There is sufficiency of evidence to prove the alleged misconduct of the First Respondent. Hence, the

Impugned Order of the Tribunal cannot be sustained.

29. In the result, the Impugned Order of the Central Administrative Tribunal, Chennai Bench made in O.A.No. 596 of 1999 (dated 13.11.2000) is

set aside and this Writ Petition is allowed. No costs.